

MOYNIHAN STATION DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

FRIDAY

JULY 26, 2013

2:00 p.m.

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 –33rd Floor
New York, New York 10017

Friday

July 26, 2013 – 2:00 p.m.

REVISED PROPOSED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of May 23, 2013 Directors' Meeting
2. Appointment of Michael Evans as President

FOR CONSIDERATION

3. Acknowledgement and Confirmation of the Corporation's Use of Moynihan Phase 1 Contingency Funds for C-Yard Change Orders Relating to Unforeseen Conditions

FOR INFORMATION

4. Contract for Events Management Services at the James A. Farley Building
5. Amtrak Presentation – Scheduling of Major Projects in the N.Y. City Area (Oral Report)
6. President's Report (Oral Report)

EXECUTIVE SESSION

7. 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
37th Floor Conference Room
New York, New York 10017

May 23, 2013

MINUTES

In Attendance

Directors:

Karen Hedlund, Chairwoman (via video conference)
Tokumbo Shobowale
Paul Williams

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

Thomas Brennan, Senior Vice President – Internal Audit
Joseph Chan, Executive Vice President – Business Development
Richard Dorado, Senior Counsel
Andrew Grossman, Senior Director – Finance Admin. Operations
Lawrence Jacobs, Executive Vice President, Legal &
General Counsel
Mehul Patel, Chief of Staff
Carlos Otero, Vice President – Contract Admin./Subsidiary Finance
Sankar Singh, Manager – Contract Audit & Admin.

**Present for the
Moynihan Station**

Development Corporation:

Michael Evans, Acting President
Rebecca Pellegrini – Project Manager
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Present for FRA/USDOT: Joe Peraino FRA/USDOT (via video conference)
Vincent White FRA/USDOT (via video conference)

Also Attending: Andrew Lynn, PANY&NJ
Angel Martinez, PANY&NJ
Marco Pirozzi, PANY&NJ
Ronald Calvosa, PANY&NJ – Inspector General
Anthony Cracchiolo, Skanska
Jack Phillips, Skanska

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order by Chairwoman Karen Hedlund at approximately 1:03 pm. Chairwoman Hedlund noted for the record that the meeting was being web cast. She also noted for the record the Corporation’s policy to welcome public comment on the items on the current Agenda. Chairwoman Hedlund briefly reviewed the protocol for comments.

Chairwoman Hedlund asked that Michael Evans begin with his President’s Report while they were waiting for Director Tokumbo Shobowale to arrive. Mr. Evans report included among other things that the construction of Phase 1 was moving smoothly, and that the Project is currently on schedule and within budget. Mr. Evans stated that Moynihan Station Project is a complex project and the Project Team is sometimes faced with unexpected issues. However, the processes put in place to deal with these problems as they come up and to resolve them and make sure that the issues do not derail the progress of the Project. He mentioned in particular, the monthly construction steering committee meetings which Chairwoman Hedlund is a member of, is an excellent forum for the key project stakeholders,

especially Amtrak and Long Island Railroad and which was beneficial to the Project team in discussing issues and resolving them before they become critical path or disruptive to the Project's progress. He stated that Amtrak has been extremely cooperative on the Project, specifically, in the scheduling of the weekend outages, which they have gone above and beyond what is required by contract. Mr. Evans explained that the cooperation exhibited by Amtrak is essential, especially due to the fact that in June the Project will be in the critical eighteen month construction period, in addition to the closure of the C Yard for the purpose of erecting the fan room in the summer and then erection of steel for the West End Concourse in the Fall which is scheduled to be completed in just over a year. He continued, that there is a lot of coordination going on and there will continue to be issues that arise, however, he believes that the Project team will be able to work through those issues with the processes that they have in place to address issues as they arise.

Mr. Evans informed the Directors that the Corporation continues to carry a heavy contingency on the Project of about 25%. He stated that he recommends that they continue to hold most of the contingency until the completion of the steel erection phase of the West End Concourse. He stated that he will continue to discuss with the Board the risk approach and how best to deal with contingency over the next eighteen months.

Mr. Evans explained to the Directors that the handout distributed to them and ESD senior staff at the meeting was not dissimilar to the chart that is currently included with the Corporation's monthly report to the Federal Railroad Administration ("FRA") and the Directors.

He stated that the chart for April would be sent to the Directors in the next week. Mr. Evans stated that in addition to the chart a regular quarterly budget reporting process has now been instituted, in which the Port Authority, the construction team and Mr. Evans meet and go through the major contracts and determine the projected spending versus actual spending and figure out what the projections are for the life of the Project. Mr. Evans continued, that this process allows the Project team to track the projected budget lines across by various contract and especially in the main construction contract for the West End Concourse. Mr. Evans stated further, that there has not been a significant use of contingency to date, however, there has been some change orders and there is a major West End Concourse change order relating to advancing the Connecting Corridor work.

Mr. Evans explained that the change order relating to the C Yard is due to mini caissons. He stated that there were two major issues being tracked by the Project team involving the C Yard, one is the mini piles and the other is steel remediation in the C Yard area on the north side of the James A. Farley Building (“Farley Building”). Mr. Evans reminded the Directors of the issue with the change orders involving the mini piles, which is due to the depth of rock being deeper than expected during the Design Phase and Survey Phase. It has now been determined that the drilling of approximately 37 mini piles is required and the cost of the drilling will be about \$600,000 which is within the contingency amount for the C Yard. He informed the Directors that change orders have been issued as the drilling and excavation for the mini piles occur.

Mr. Evans pointed out that there was good news and bad news regarding the steel remediation. The bad news is there seems to be major deterioration; and the good news is it appears the deterioration has not occurred in places which would hinder the erection of steel for the Fan Room. As a result of this determination, Mr. Evans explained that the Project team and structural engineer have been requested to conduct an assessment of all of the steel underneath and around the Farley Building in order to provide a recommendation to the Board in the summer of how to deal with this issue. He further explained that although this issue does not hinder the erection of the Fan Room and C Yard, it may be a potentially long term issue for the building and the development of the Phase 2 train hall and the redevelopment of the remainder of the building for commercial mixed-use development. Mr. Evans expects to have a full report and recommendation at the next Board meeting.

Mr. Evans asked Angel Martinez to give a status report on the general construction which will be followed by a report from Jack Phillips from Skanska, on the approach to the C Yard closure in the summer.

Mr. Martinez report included, among other things that the Project is progressing well, even with the C Yard change order. He stated that Skanska is making good progress. Skanska has completed the conduit and fiber relocation along Track 21 which has allowed the installation of eight (8) mini piles that are required along the north wall and Platform 8. He continued that approximately sixty-eight percent of the piles have been installed. In addition to the mini piles Mr. Martinez reported that foundation work has been completed on several

platforms and the removal of stair towers and barricades has been completed at those platforms as well. He reported that demolition is substantially completed in the Farley Building, and asbestos abatement will begin in the south west area of the basement and in the area where openings are planned in the C Yard. He continued, that survey work is continuing so that a comprehensive assessment by the Project team can be made.

Mr. Martinez noted that there are two (2) areas on the critical path for the steel erection of the West End Concourse. He stated that his team is focused on building up the West End Concourse and the C Yard. Mr. Martinez reported that the C Yard work is ongoing and all systems are go for the work in the C Yard. He explained that before steel erection can begin in the West End Concourse in October, removal of some obstructions that are in the way must be done. The obstructions fall into two categories, 1) the design and installation of a new signal and 2) temporarily taking out the signal and not use the crossover in an interim period. Lastly, Mr. Martinez reported that the communication systems that run along the platforms, as per contract, are to be relocated to a new track and that track is now in place. He informed the Directors of the scope of this particular work and the issue involving this work. He explained that because the PA system is installed and/or maintained by a third-party, it's been a little challenging. Although it's been challenging his team continues to make progress by requesting from the railroads and Amtrak three things: 1) to provide a single contract person with the authority to make some decisions, 2) allow work to be performed in day shifts, and 3) finalize and specify what's testing and acceptance. He explained that the system must be tested before it's disconnected so that when the system is reconnected there is a baseline to connect to.

Following Mr. Martinez report Mr. Evans asked Jack Phillips, Project Manager from Skanska to give a brief report on how Skanska plans to undertake work at the C Yard during the summer. Mr. Evans reminded the Directors of the sixty-five day closure of the C yard tracks that the Corporation had negotiated. The closure will begin in June and Skanska will work for sixty-five days around the clock in order to complete the Fan Room, steel and masonry work.

Mr. Phillips distributed a hand out to the Directors of an overall plan of the West End Concourse. He explained that the handout showed the layout of the C Yard outage work. He further explained that the shaded areas on the handout represented construction of the Fan Rooms, the electrical substations and generator rooms. Mr. Phillips stated that Skanska's plan of action for the work in the C Yard entails working from the west to the east. He stated that Skanska's plan is to perform steel erection work which will create the areas, create the rooms and perform concrete work to make the facilities. He explained that Skanska has been working with Amtrak so that as much work as possible can be done during the weekend outages. He continued, that Amtrak has been helpful with helping Skanska during their night work so that the area will be ready for the steel erection. Mr. Phillips stated further, that they have received most of the shop drawings and he anticipates receiving additional drawings sometime during the following week. He reported that his team has expedited the steel fabrication. The plan is to have the fabrication of the steel for the Fan Room expedited in order to have the steel delivered early and lowered down into the cavern and into position so that the installation work can proceed as scheduled. Mr. Phillips mentioned that work is being done at the MPT on 33rd Street which is the access point that requires mobilization at the street level

and in the cavern next to the platforms. Mr. Phillips concluded that Skanska plans to take the impediments out of the area, so that work can proceed on schedule, if not earlier than scheduled, on the outages and to manage the production of the labor with the ironworkers and other trades to make sure that work is being done efficiently and effectively in the shed area during the outages for all sixty-five days.

Following Mr. Phillips report Director Shobowale asked Mr. Phillips, what is his biggest concern with the work. Mr. Phillips responded that there are three things that concern him; 1) fabrication of the steel 2) coordination with Amtrak and 3) productivity and control of the trades. However, he believes that his team has processes in place to handle these concerns.

Following the President's report and the Project status updates given by Mr. Martinez and Mr. Phillips, Chairwoman Hedlund moved to the next order of business since a quorum was now present upon the arrival of Director Shobowale. Chairwoman Hedlund requested approval of the Minutes of the Directors' meeting of March 27, 2013. There being no changes or corrections to the minutes, upon motion duly made and seconded the following resolution was unanimously adopted:

194. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 27, 2013 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on March 27, 2013, is 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.

* * *

Mr. Evans presented the next Agenda item requesting authorization to appoint Lawrence Jacobs as the General Counsel.

Mr. Evans stated that Lawrence Jacobs had recently been appointed General Counsel for the Empire State Development and that the Corporation is requesting that Mr. Jacobs be appointed General Counsel of the Moynihan Station Development Corporation, in keeping with the role that ESD has supporting its subsidiaries. Mr. Evans continued, informing the Directors of Mr. Jacobs' distinguished career in the legal field. He stated that Mr. Jacobs graduated with honors from Temple University and Brooklyn Law School where he was a member of the Law Review; and Mr. Jacobs recently served as General Counsel to the News Corporation.

Following Mr. Evans presentation, Chairwoman Hedlund welcomed Mr. Jacobs to the Corporation and asked if there were any questions or comments from the Directors. Director Paul Williams commented that he was delighted that Mr. Jacobs will be on board and to be of service to MSDC and ESD.

Chairwoman Hedlund then entertained a motion for approval, upon motion duly made and seconded the following resolution was unanimously adopted:

195. Moynihan Station Development Corporation - Appointment of Officer – General Counsel

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.

* * *

Mr. Evans continued with the next Agenda item requesting authorization for the Corporation to amend a contract for architectural, engineering design and construction Phase services with Skidmore, Owings & Merrill, LLP (“SOM”).

In his presentation Mr. Evans stated that SOM services are required in order to advance to Phase 2 of the Project which entails the construction of the Inner City Train Hall, redevelopment of the Farley Building, additional master planning and feasibility analysis and design work. He explained that SOM is the architect of record for Phase 1 and is also the architect for the master plan for Phase 2. He explained further that SOM and their sub-consultants will perform this work during the summer, and the work will consist of a real estate

market analysis, financial feasibility analysis, test fitting, conceptual design work and operating and construction cost analysis. The work will be coordinated with both the Port Authority and Amtrak and the Port Authority and Amtrak have agreed to jointly fund this work with MSDC.

Following Mr. Evans presentation, Chairwoman Hedlund asked the Directors if they had any questions or comments. Director Williams asked how was the SOM contract structured in terms of payment, that is, if it is billable time or benchmarks. Mr. Evans responded that they had received pricing based on discrete tasks and SOM and its consultants would be submitting a schedule for hours which will include their staffing plan and how they plan to bill against each staff, including any traveling costs.

Director Tokumbo Shobowale commented that it seems like the contract is both billable and benchmark. Mr. Evans responded that they have established a lump sum for the tasks and SOM will provide a breakdown of those costs for MSDC's records.

Director Williams wanted to know if there was an overall cap. Mr. Evans responded affirmatively.

There being no other questions or comments from the Directors, Chairwoman Hedlund asked if there were any comments from the public, there being none, she requested a motion for approval. Upon motion duly made and seconded the following resolution was unanimously adopted:

196. 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
-

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.

* * *

The next Agenda item was also presented by Mr. Evans, wherein he requested authorization for the Corporation to amend a contract with Thacher Associates (“Thacher”).

Mr. Evans provided background information regarding the award of a contract for integrity monitor services to Thacher Associates in June 2012. He explained that although Thacher was awarded the contract based on a competitive process, due to funding issues, the contract was limited to the West End Concourse even though the selection process included all Phase 1 work. Mr. Evans stated that the Corporation was able to accelerate additional construction work with the allocation of the high-speed rail funds and thus required the expanded oversight of Thacher for the construction work. Lastly, Mr. Evans reported that

Thacher's work performance has been exceptional and the Corporation believes that Thacher is the right firm to continue with the integrity monitoring services. Thacher has submitted a proposal to provide these services for the same percentage compensation that they are providing service for the West End Concourse oversight work. Mr. Evans informed the Directors that a Contract Reporter exemption had been submitted to ESD's Legal Dept. He explained that a Contract Reporter exemption is required because during the procurement process the bidders were asked to submit a proposal just for the West End Concourse and therefore, a Contract Reporter exemption is now required for the new services. Mr. Evans reiterated to the Directors that the Corporation recommends moving forward with the amendment of the Thacher contract to ensure integrity monitoring oversight for the new work.

Chairwoman Hedlund asked if there were any questions or comments from the Directors. Director Shobowale asked if the Board's approval is contingent upon the acceptance of the Contract Reporter exemption. Mr. Evans responded affirmatively. He stated that the exemption is with ESD's Legal awaiting final sign-off. Director Shobowale then asked if there were any notable reports from Thacher thus far. Mr. Evans stated that Ron Calvosa from the Port Authority Inspector General's office was present and that Mr. Calvosa provides day-to-day oversight on the Thacher contract. Mr. Evans asked Mr. Calvosa to give a brief report on Thacher's work.

Mr. Calvosa reported that Thacher has been performing their monitoring duties by providing monitoring over areas such as prevailing wage compliance, and MWBE compliance.

He stated further that there have not been any notable findings which he considers to be a good thing.

In response to Director Shobowale’s question, Mr. Evans let Mr. Shobowale know that Mr. Calvosa and his team manage Thacher on a daily basis and Thacher is on the Project site several times a week. He stated that a quarterly update with Thacher, Mr. Calvosa and his team, and MSDC has been instituted. The quarterly update will be scheduled twice in person, twice by phone and if any issues arise Mr. Evans will be contacted regarding those issues. Lastly, he stated that he would like Thacher to report to the Board at least once a year.

Chairwoman Hedlund asked if there were any questions from the public, hearing none, she requested a motion for approval. Upon motion duly made and seconded the following resolution was unanimously adopted:

197. 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
-

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.

* * *

Chairwoman Hedlund then 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:

198. 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' 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.

Once the meeting was back in Open Session, Chairwoman 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
1:55 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

ITEM 2

FOR CONSIDERATION

July 26, 2013

TO: The Directors

FROM: John Porcari

SUBJECT: New York (New York County) – Moynihan Station Development Corporation

REQUEST FOR: Appointment of Michael Evans as President

BACKGROUND

It is requested that the Directors appoint Michael Evans as President of Moynihan Station Development Corporation (“MSDC” or the “Corporation”), effective as of February 21, 2013.

Mr. Evans was appointed Acting President of the Corporation on February 21, 2013 upon the retirement of Timothy Gilchrist. He has been serving in that capacity dutifully and with distinction.

Prior to serving as Acting President, Mr. Evans was a Vice President of the Corporation and Deputy Director from November 2010. Mr. Evans had previously served as Chief of Staff to the Lt. Governor of the State of New York and as Special Assistant for Infrastructure in the New York Governor’s Office.

Mr. Evans received his B.A. from the University of Sidney and his Masters of Philosophy from the University of Oxford, Christ Church.

REQUESTED ACTION

The Board is requested to appoint Michael Evans as President of the Corporation and to confirm that he is an officer of the Corporation in accordance with and for the purposes of the By-Laws, including the indemnification provisions thereof.

RECOMMENDATION

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

ATTACHMENT

Resolutions

July 26, 2013

New York (New York County) – Moynihan Station Development Corporation – Appointment of Michael Evans as President

RESOLVED that, based on the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the Corporation hereby appoints Michael Evans as President of the Corporation, to have and to hold all the powers of President, effective from February 21, 2013 until his earlier resignation or removal; and be it further

RESOLVED that in accordance with and for all purposes of the Corporation By-Laws, including the indemnification provisions thereof, Michael Evans is an “officer” of the Corporation.

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ITEM 3

FOR CONSIDERATION

July 26, 2013

TO: The Directors

FROM: Michael J. Evans

SUBJECT: New York (New York County) – Moynihan Station Development Corporation

REQUEST FOR: Acknowledgement and Confirmation of the Corporation's Use of Moynihan Phase 1 Contingency Funds for C-Yard Change Orders Relating to Unforeseen Conditions

BACKGROUND

It is requested that the Corporation's Board acknowledge that it has been briefed on the status of change orders relating to unforeseen conditions during the course of construction of the fan room structures in C-Yard and confirm the use by the Corporation of Moynihan Phase 1 contingency funds for the payment of the cost of these change orders.

On May 9, 2012, the Board authorized the Corporation's award of a construction contract in the amount of **\$147,750,000** to Skanska USA Civil Northeast, Inc. for the expansion of the West End Concourse. At this time, the Board also authorized a contingency amount of **\$14,775,000**.

As a result of additional funding becoming available for Moynihan Phase 1 through the federal High Speed Intercity Passenger Rail Program, on January 18, 2013 the Board authorized the Corporation to proceed with a change order to the Skanska contract in the amount of **\$22,260,679** in order to fund the construction of fan room structures in C-yard of Penn Station underneath the Farley Building. Concurrently, the Board authorized an additional **\$2,226,068** contingency amount for this contract in order to provide an appropriate contingency for the increased value of the contract. This brought the total amount of the Skanska contract to **\$170,010,679** with a 10% authorized contingency of **\$17,001,068**.

At the time of the C-Yard change order, the Board was informed that preliminary surveys of the condition of the steel underneath the Farley Building in the vicinity of the C-Yard fan rooms indicated that a significant degree of remediation work would likely be necessary as part of the fan room work. MSDC staff indicated it would report to the Board more fully on the matter of steel remediation as the extent of the deterioration of the steel was better understood.

As a result of unforeseen conditions relating to the depth of bedrock in C-Yard and the condition of the rock of the northern retaining wall of Penn Station, as well as the condition of the steel members supporting the northern side of the Farley Building, the following change orders are required to accomplish the construction of the C-Yard fan rooms as originally contemplated.

1. **Steel Remediation** – Remediation of existing steel members required in order to support fan room structures in C-Yard beneath the Farley Building.
Estimated Cost: \$400,000.00
2. **C-Yard Piles** – Due to the depth of bedrock within C-Yard more than 30 piles were required to support column placements for the C-Yard fan rooms.
Confirmed Cost: \$630,000.00
3. **Rock Wall Re-enforcement** – Due to fissures within the northern Penn Station retaining wall that were exposed during the installation of beam pockets for the fan room steel, installation of more than 70 rock bolts is required in order for the wall to be able to support the fan room steel. This work is both material and labor intensive.
Estimated Cost: \$2,000,000.00

While these change orders exceed the budgeted contingency for the C-Yard fan rooms, MSDC is carrying sufficient contingency within the overall Skanska contract, and within the overall Moynihan Phase 1 budget, to cover this work.

In addition to the C-Yard change orders, there are approximately **\$5.9 million** in change orders in process for the West End Concourse work. The major change orders are as follows:

- **\$3,700,000** for work within the train-shed required for the Connecting Corridor Sub-project.
- **\$700,000** for various change orders relating to utilities, including changes in the field and unforeseen conditions.
- **\$600,000** for the procurement of the Uni-lens signals originally intended to be procured by Amtrak under the Force Account Agreement.
- **\$250,000** for Communications Systems work originally intended to be performed by Amtrak forces under the Force Account Agreement.

In summary, of the authorized **\$17,001,068** in contingency for the Skanska contract, approximately **\$8,900,000** is accounted for, with approximately **\$8,100,000** in authorized contingency remaining. With "Work in Place" for both C-Yard and the West End Concourse of approximately **\$55,000,000**, this leaves an authorized contingency of **7.0%** of the remaining value of the contract.

REQUESTED ACTION

Directors of the Corporation have requested that the Board be formally briefed on the change orders related to the unforeseen conditions described in these materials. The Board is requested (i) to acknowledge that it has been briefed on the status of change orders relating to unforeseen conditions during the construction of the fan room structures in C-Yard and (ii) to confirm the Corporation's use of contingency funds for Moynihan Phase 1, as specified above, to cover the cost of these change orders.

RECOMMENDATION

Based on the foregoing, the Corporation's President recommends approval of the requested action.

ATTACHMENT

Resolutions

July 26, 2013

New York (New York County) – Moynihan Station Development Corporation –
Acknowledgement and Confirmation of the Corporation's Use of Moynihan Phase 1
Contingency Funds for C-Yard Change Orders Relating to Unforeseen Conditions

RESOLVED that, based on the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the "Materials"), the Board acknowledges that it has been briefed on the status of change orders described in the Materials relating to unforeseen conditions during the course of construction of the fan room structures in C-Yard; and be it further

RESOLVED that, the Board confirms the Corporation's use of Moynihan Phase 1 contingency funds for payment of the cost of the change orders in the manner described within the Materials.

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ITEM 4

FOR INFORMATION

July 26, 2013

TO: The Directors

FROM: Michael Evans

SUBJECT: New York City (New York County) – Moynihan Station Civic and Land Use Improvement Project - Contract for Farley Building Events Management with the Skylight Group

BACKGROUND

In the interest of raising revenue to support the operating costs of the Farley Building and to generate buzz about the Moynihan Station Project, ESD and MSDC have sought interim uses for the largely vacant facility prior to the commencement of construction on the train hall. Within the past year, the Farley Building has hosted fashion shows, charity galas, product launches and corporate events—raising more than \$1,000,000 in FY2012-13. In order to increase the number and quality of events at the building, and revenues from these events, in April ESD and MSDC issued a Request for Qualifications for a Farley Building Events Manager.

The Farley Building Events Manager will be granted the exclusive right to book and manage the two main event spaces within the Farley Building--the Old Sorting Hall (approximately 40,000 square feet) and the sky-lit Postal Dock (approximately 25,000 square feet). Designating an exclusive broker for the spaces will allow ESD and MSDC to cultivate a unique brand identity for the building and better manage these event spaces in order to increase the revenues from events.

Selection Process

MSDC, on behalf of ESD, issued a Request for Qualifications (RFQ) for a Farley Building Events Manager on April 16, 2013. The RFQ was advertised in the Contract Reporter. Additionally, MSDC sent a link to the RFQ to every firm that had previously held an event in the building or made an inquiry about holding an event in the building. MSDC also sent notice of the RFQ to print and online trade publications in the events industry.

Several firms expressed written interest in the proposal via the RFQ email account and submitted questions about the RFQ. On April 25, MSDC held a pre-bid conference and site walk thru for bidders. Four firms responded for this pre-bid meeting, and two firms attended—Skylight Group and Vance Garrett Productions. Ultimately, two firms submitted responses to the RFQ on May 9, 2013—Skylight Group and the Michael Alan Group. The proposals were evaluated by a Selection Committee comprising representatives from ESD, MSDC, Office of

General Services and the Port Authority of New York and New Jersey. The Selection Committee evaluated the responders based on the experience of the firms with large events (both in terms of budget and attendees), the experience of the firms working in historic structures, the proposed management plan, and the experience of the proposed management staff.

The firms did not compete on price, and the compensation structure for the contract was set in the RFQ. Because of the construction that is underway, and the fact that the Farley Building is a government building and an historic structure, ESD and MSDC jointly determined that it was not possible to allow the firms to compete on a "minimum guarantee" for event revenues. MSDC in particular needs to retain complete flexibility to approve or disapprove events so that they do not impact the construction schedule for Phase 1 of the Moynihan Station Project. In addition, ESD needs to retain the flexibility to approve and disapprove events based on the suitability of events for a state property. Therefore, compensation will be based on the industry standard for event space brokers in New York City of 20% of the gross rental fee for each event that is booked. By basing the compensation on a percentage of the rental fee, the Farley Building Events Manager will be incentivized to negotiate the best price for each event on behalf of ESD and MSDC.

The Selection Committee scored each submission based on the criteria listed above and then interviewed each firm. Based upon a review of the submissions and the interviews, the Selection Committee unanimously recommended the Skylight Group.

Skylight Group has been brokering and managing event spaces in New York City for the past decade and has considerable experience in managing large scale events with budgets well over \$1,000,000 and more than a thousand people. Skylight has also worked with historically sensitive spaces in a number of instances. Currently, Skylight Group brokers events for One Hanson Place in Brooklyn, the Highline and the McKittrick Hotel. Skylight Group is one of the firms that rented space within the Farley Building over the past year, namely for Fashion Week in September 2012 and February 2013, and is very familiar with the constraints of the building and its limitations as an event space.

Based upon the recommendation of the Selection Committee, MSDC and ESD entered into contract negotiations with Skylight, the resulting material terms of which are detailed below.

Key Terms

- Skylight Group will have the exclusive right to market and book events for the Old Sorting Hall and Postal Dock on the first floor of the Farley Building.
- Skylight Group must receive written approval from MSDC, on behalf of ESD, for each proposed event.

- Because of the Farley Building's status as a government building and an historic landmark, MSDC reserves the right to approve or disapprove a proposed event, at its sole discretion, if the event or an activity will unduly interfere with MSDC operations or the operations of its contractors, subcontractors or the United States Postal Service (USPS); create health or safety risks for ESD, MSDC, USPS, their contractors and subcontractors, or the public; or not be in keeping with the historic nature of the facility and its status as a government and landmarked building.
- EDC will not require a minimum guarantee from the selected Farley Building Events Manager.
- Skylight Group will work with ESD staff, MSDC staff, PANYNJ staff and staff from the New York State Office of General Services (OGS), which is the contractual property manager, to manage the events within the Farley Building so as to ensure there is no adverse impact to the facility or the construction work for Moynihan Station that is now underway.
- Skylight Group will also be encouraged to identify revenue and non-revenue producing events and cultural activities for the other spaces within the Farley Building that are in keeping with the mission of ESD and MSDC, as the government entities responsible for the construction of the new station and the redevelopment of the Farley Building, and the facilities status as an historic landmark and government building. These might include, but are not limited to, art exhibitions, theater performances and location filming.
- For events that are approved for spaces in the building other than the Old Sorting Hall and the Postal Dock, compensation will mirror the formula used for the Old Sorting Hall and Postal Dock, as described below.
- However, each of ESD and MSDC reserve the right to enter into its own contracts with other parties for events in parts of the building aside from the Old Sorting Hall and the Postal Dock without compensating the selected Farley Building Events Manager.
- Skylight Group will ensure that all events within the building possess all required legal permits, including but not limited to, Temporary Public Assembly permits, Lane Closure Permits and State Liquor Authority Permits.
- Skylight Group will carry insurance as required by ESD and will require all event production companies working within the building to carry insurance as specified by MSDC and ESD.

- Any alterations or structures erected in connection with an event must be temporary in nature, easily removable and cause no damage to any historic feature of the Farley Building.
- The term of the Agreement shall be one (1) year period commencing in 2013 with three (3) six (6) month options possible at the discretion of ESD.

Compensation

Skylight Group will be compensated with 20% of the gross rental fee for each event that is booked. In addition, Skylight Group will be incentivized to maximize the number of events and quality and dollar value of these events as described herein according to the following formula, which was set out in the RFQ.

- When the gross revenue from rental fees exceeds \$1,500,000 for the year, ESD will increase the compensation percentage for each event from that point forward to 25% of the booking fee.
- When the gross revenue from rental fees exceeds \$2,500,000 for the year, ESD will further increase the compensation percentage for each event from that point forward to 30% of the booking fee.
- Should the contract be extended after the first year, the same percentage structure will apply.
- At the beginning of the second year, the percentage compensation will return to 20% and will grow based upon the same gross revenue targets used in the first year.

The incentive formula was created in order to incentivize the Farley Building Events Manager to increase revenues above the \$1,000,000 threshold raised in FY2013-14.

The Farley Building Events Manager will not be entitled to compensation for disapproved events.

FUNDING

Skylight will be compensated solely from the revenues that they raise from events held at the building. The applicable compensation percentage for Skylight Group, as described above, will be deducted from the rental fee for each event.

RESPONSIBLE PARTIES

Pursuant to State Finance Law Section 139-j and 139-k and ESD's policy related thereto, staff has (a) considered the ability of the Skylight Group 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 the Skylight Group to be responsible.

AFFIRMATIVE ACTION

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Skylight Group shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise ("MWBEs") for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 20%. The overall goal shall include a Minority Business Enterprise ("MBE") Participation Goal of 15% and a Women Business Enterprise ("WBE") Participation Goal of 5% related to the total value of work performed.

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.