

MOYNIHAN STATION DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

THURSDAY

JULY 10, 2014

3:30 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

Thursday

July 10, 2014 – 3:30 p.m.

PROPOSED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the March 20, 2014 Directors' Meeting

FOR INFORMATION

2. President's Report (Oral Report)

FOR CONSIDERATION

3. Authorization to Amend Contract with Jerome Haims Realty, Inc. for Valuation Services
4. Authorization to Amend Contract with AKRF, Inc. for Environmental Consulting Services In Connection with Moynihan Station Project
5. Authorization to Amend the Construction Contract with Skanska USA Civil Northeast, Inc. ("Skanska Civil") to Increase Authorized Contingency
6. Authorization to Enter into Contract with Skadden, Arps, Slate, Meagher & Flom LLP for Legal Services and Authorization to Take Related Actions
7. Authorization to Enter into Contract with Bryant Rabbino LLP for Legal Services and Authorization to Take Related Actions

EXECUTIVE SESSION

8. Report on Real Estate Negotiations with Designated Developers (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

March 20, 2014

MINUTES

In Attendance

Directors:

Karen Hedlund
Victor Mendez (via video conference)
Anita Romero (via telephone)
Tokumbo Shobowale
Paul Williams

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

Jasmine Baker, Coordinator – Social Media & Communications
Thomas Brennan, Senior Vice President – Internal Audit
Ingrid Barbosa-Santiago, Director of Subsidiary Finance
Joseph Chan, Executive Vice President – Business Development
Richard Dorado, Senior Counsel
Elizabeth Fine, Executive Vice President – Legal & General
Counsel
Nicole Jordan, Manager –Community Relations
Kathleen Mize, Deputy CFO and Controller
Mehul Patel, Chief of Staff
Marion Phillips III, Senior Vice President – Community Relations
Carlos Otero, Vice President – Contract Admin./Subsidiary
Finance
Sankar Singh, Manager – Contract Audit & Admin.
Margaret Tobin, Chief Financial Officer

**Present for the
Moynihan Station**

Development Corporation:

Fred Bartoli, Project Manager
Michael Evans, President
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Present for FRA/USDOT:

Joe Peraino, USDOT/FRA (via video conference)
Vincent White, USDOT/FRA (via video conference)

Also Attending: Kelly Eustice, PANY&NJ
Patrick Higgins, PANY&NJ
Bruno Signorelli, PANY&NJ
Kenneth Swan PANY&NJ
Mark Leininger, Skidmore Owings & Merrill
Mark Regulinski, Skidmore Owings & Merrill

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order by Karen Hedlund at approximately 3:04 pm. Chairwoman Hedlund noted for the record that the meeting was being webcast. She also noted for the record the Corporation’s policy to welcome public comments on the items on the current Agenda. Chairwoman Hedlund briefly reviewed the protocol for comments.

Before beginning with substantive portion of the meeting, Chairwoman Hedlund asked the directors whether anyone had any potential conflict of interest with respect to any of the items on the Agenda, and if so, she asked that the Director make the appropriate disclosure on the record and recuse him or herself from any discussion or vote with regard to any such items. Chairwoman Hedlund noted for the record that there was no response to her request.

Before moving to the approval of the meeting minutes, Chairwoman Hedlund introduced her colleague and mentor and the newest member of the Board, Victor Mendez, Acting Deputy Secretary of the Department of Transportation. Director Mendez commented that he is looking forward to working with everyone on this amazing Project and is looking forward to moving the Project forward.

Chairwoman Hedlund asked everyone seated at the table to introduce themselves to Director Mendez. Each person seated at the table introduce themselves as follows: (1) Director Paul Williams, President of DASNY, (2) Elizabeth Fine , ESD’s new General Counsel, (3) Margaret Tobin, ESD’s new CFO, (4) Kathleen Mize, Controller at ESD, (5) Bruno Signorelli, Engineer Construction for the Port Authority of NY & NJ (“PANYNJ”) (6) Fred Bartoli, Project Manager Transportation, core appointment, safety development, MSDC, (7) Richard Dorado, Senior Counsel ESD, and counsel to MSDC, (8) Joseph Chan, Executive Vice President for Real Estate and Public Private Partnerships at ESD, (9) Mehul Patel, Chief of Staff at ESD; (10) Director Tokumbo Shobowale, CFO of the New School in NYC, and (11) Michael Evans, President of MSDC.

Following the introduction of the Directors, ESD and MSDC staff, the first order of business was the approval of the Minutes of the December 13, 2013 Directors’ meeting. There being no changes or corrections to the minutes, upon motion duly made and seconded, the following resolution was unanimously adopted:

205. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE DECEMBER 13, 2013 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on December 13, 2013, are hereby approved and all actions taken by the Directors present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Next, Chairwoman Hedlund asked Richard Dorado to present the next Agenda item requesting authorization to appoint Elizabeth Fine to the office of General Counsel. Mr. Dorado explained to the Directors that the office of the Corporation's General Counsel is currently vacant, and that it's common practice that ESD's General Counsel also be appointed General Counsel of its subsidiaries. He stated that Ms. Fine was appointed ESD'S Executive Vice President Legal and General Counsel at ESD's Directors' meeting on February 20, 2014. He stated further that Ms. Fine has an extensive legal background, and such experience is set out in the board materials. Mr. Dorado recommended that the Corporation authorize the automatic ex-officio appointment as the Corporation's General Counsel as the person appointed by the ESD Directors as ESD'S General Counsel, provided that the board may act to remove such person from the position of the Corporation's General Counsel. Mr. Dorado explained that this would allow future staff changes without the need for additional board action and also will ensure that that the office of General Counsel will not be unnecessarily vacant.

Following a full presentation of the item by Mr. Dorado, Director Anita Romero commented that in connection with the proposed resolution that would make the General Counsel of ESD the General Counsel, ex-officio of MSDC, she would like the Directors to receive advance notice of the appointment. Chairwoman Hedlund responded that the resolution would be amended to include her request.

There being no additional questions or comments Chairwoman Hedlund requested a motion for approval, upon motion duly made and seconded, the following resolution was unanimously adopted:

206. Moynihan Station Development Corporation Officers of the Corporation - Appointment of Officer – *Ex-Officio* appointment of General Counsel

BE IT RESOLVED, that Elizabeth R. Fine be, and she hereby is, appointed to the office of General Counsel to the Moynihan Station Development Corporation (the “Corporation”); until her earlier resignation or removal, her 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 (the “UDC 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

RESOLVED, that it is hereby authorized that the appointment to the position of the General Counsel of the Corporation shall be an automatic ex-officio appointment of the person who is, from time to time, appointed by the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) Directors as ESD’s General Counsel; provided, however, that the Board shall be notified that the ESD Directors have appointed such person as the ESD General Counsel, and, provided, further, that the Board of the Corporation may by Board action remove such person from that position; and be it further

RESOLVED, that with respect to each person who receives such automatic ex-officio appointment as General Counsel to the Corporation it is hereby confirmed that this position is an “officer” of the Corporation within the meaning of the UDC Act and the provisions of the Corporation’s bylaws, including the indemnification provision thereof.

* * *

Chairwoman Hedlund asked Michael Evans to present the next Agenda item requesting approval of MSDC’s Operating and Capital budgets and the Capital Budget for the Farely Building for fiscal years 2014 and 2015.

Mr. Evans explained that in order to be in compliance with the New York State law which requires corporate directors to approve operating and capital spending budget plans for the end of the preceding fiscal year, the Directors are being asked to approve MSDC's proposed 2014-15 operating and capital budgets. He further explained that MSDC's budgets are grouped into categories, an operating budget for MSDC staff and offices, a budget for Phase I project capital spending, and capital spending for operating and maintaining the Farley Building, as well as the predevelopment costs of Phase II. Mr. Evans proceeded by stating that form spreadsheets from ESD and the Division of Budget were included in the materials and had been reviewed with the Directors prior to the meeting. Mr. Evans then proceeded by presenting MSDC's operating budget. He stated that he expects a 17 percent overall increase in the operating budget, which is due to moving one of the staff who currently works part-time for ESD and part-time for MSDC to working full time for MSDC. He reminded the Directors that the three (3) full-time employees that were shedded at the end of the 2012 and early 2013 had not been replaced and as a result reduced MSDC's operating budget by several hundred thousand dollars, therefore making the shift of one employee to full-time status a small increase. This will allow the required work to be done to achieve the construction of MSDC Project and maintain the Farley Building, specifically, the events business which are currently being held in the Farley Building.

Mr. Evans continued, stating that with respect to the non-personal services, there is only a 5 percent increase to the proposed spending plan and that he projects the current fiscal year spending plan for non-personal service expenses to be 65 percent lower than last year's

expenses. Mr. Evans explained that this lower percentage for non-personal services is due to the Corporation not incurring costs for advertising and Public Hearing during the current fiscal year. However, Mr. Evans anticipates that the Corporation will incur this expense in the coming fiscal year.

Mr. Evans then moved on to the Capital budget. He explained to the Directors that the capital expenses are a collection of all contracts that collectively make up and relate to the construction currently under way on Phase I of the Project. He continued, stating that included are the construction advisory services which is provided by the Project's design team. He stated that costs for these services are less than what had been budgeted for in last year's budget since the upfront shop drawings and middle process is well under way and is anticipated to be nearing completion.

Mr. Evans stated that legal costs are projected to be less than last year as a result of most of the agreements necessary for Phase I are either complete or near completion. He explained that the legal team is primarily kept working on follow-up questions, clean-up on certain documents as well as, any amendments which may arise later on through the process.

The construction budget, Mr. Evans explained includes two (2) construction contracts with Skanska, one for the West End Concourse and C-Yard Ventilation structures, and the other for the Connecting Corridor Project. In addition, also included in the construction budget, are all force account budgets and Amtrak, New York City Transit, Long Island Railroad, as well as

the construction management budget, the STA Joint Venture, which manages day-to-day construction.

Lastly, Mr. Evans explained the systematic forecasting process that the budget numbers are based on. He stated that the construction management team develops a full construction forecast throughout the duration of the Project which is updated quarterly and reviewed with the PANYNJ and MSDC staff. These quarterly updates are provide to Federal Railroad Administration (“FRA”) and are reflected in monthly reports submitted to the Board members and FRA. He further stated that the total budget of \$77,375,000 is in line with projections, as well as in-line with the overall Project budget.

Following Mr. Evans’ presentation of the Capital Budget, Chairwoman Hedlund asked what percentage of the construction will be complete by the end of 2015 fiscal year. Mr. Evans explained that currently the construction completion is close to 40 percent, and he anticipated by the end of 2015 that all of the Concourse steel will be up. Mr. Evans asked Bruno Signorelli of PANYNJ to give a calculation on a percentage basis. Mr. Signorelli responded 75 percent of construction is anticipated to be completed by the end of the 2015 fiscal year.

Mr. Evans continued stating that the steps to take place for the coming year would be covered later in his report which will show the construction moving forward nicely. He noted that he expects to be through the Tiger Grant by the end of the coming fiscal year which he considers to be a positive outcome.

Mr. Evans moved on to the Farley Building Capital Expense authorization. He explained that this expenditure plan is for the operation and maintenance of the Farley Building, including capital work that need to be completed prior to advancing into Phase II of the Project, as well as predevelopment costs related to the Project's Phase II. Mr. Evans continued by highlighting the expenditure plan. He stated that acquisition costs cover the principal payment on the mortgage which is due in August. He explained that design and soft costs are the largest expense and relates to an ESD contract with Ernst and Young Advisors on infrastructure finance. He stated that these funds will come from funds provided to the Corporation by PANYNJ and MTA from the predevelopment fund. Mr. Evans explained to the Directors that although this is an ESD contract the expenditures are being carried by MSDC because these are MSDC predevelopment costs, and the contract was handled through ESD because the firm was selected through solicitation from a pre-qualified list for advisory services.

Mr. Evans continued stating that Washington Square Partners which provides real estate finance advisory services, has worked on the Project for a long time and have a lot of Project history. He explained that Washington Square Partners were instrumental in the creation of the original RFP and negotiations in 2004/2005. He continued stating that URS's contract is winding down, however, URS continues to provide as needed services, as well as, engineering services related to maintaining the Farley Building and perspective projects at the building.

Lastly, Mr. Evans stated that the comprehensive market feasibility update studies for the Farley Building have been completed by SOM and their sub-consultant, Jones, Lang, LaSalle, during the current fiscal year; however, billings are lagging and it is anticipated that the balance of the billings for the studies will come up in the next couple of months causing those billings to be tracked in the coming fiscal year.

Next, Mr. Evans discussed Legal costs. He stated among other things, that the Corporation tracked below the planned costs on legal expenses for last year. He continued stating that he has continued to budget for expected costs if the Corporation moves forward to closing on Phase II of the Project with the joint venture. Since the closing on Phase II was not accomplished in the past year, the Corporation will continue to maintain a robust budget in anticipation of further progress toward the Phase II closing.

Mr. Evans then presented highlights on property management expenditures for the Farley Building. He stated that the biggest number on the budget is related to the contract with Office of General Services (“OGS”). He continued explaining that the OGS is a New York State agency that runs the Farley Building. He stated that OGS’s contract covers all the operating costs for the building and that the biggest expenses are for, engineering staff, steam and electric, as well as, security and a separate contract to maintain, operate, fix and repair the elevators throughout the building. Mr. Evans informed the Directors that the budgeted costs are consistent with the prior fiscal year and he does not anticipate any increase on the contract.

The next Farley Building expenditure Mr. Evans discussed was the building's insurance. He informed the Directors that the next item on today's Agenda pertained to the Farley Building's insurance. He stated that there is a two and a half percent increase over last year's costs, for commercial property and general liability policies for the building.

Mr. Evans continued with construction expenditures of the building, reminding the Directors of their prior approval to rehabilitate the water tank that supplies emergency water supply throughout the building. He explained that the Project is underway but due to permitting and abatement issues the completion date is six months behind schedule. As a result of the delay, part of the cost has been moved into the budget for the next fiscal year.

Mr. Evans then discussed contingency and capital reserve. He stated that the Corporation did not use any contingency fund during the prior year, however due to the age of the building he believes it is prudent to carry a capital reserve account. The funds for this budget expenditure will come from rent from the Post Office and other activities in the Farley Building, as well as funds provided by PANYNJ under an agreement with the Governor's office and ESD.

Following Mr. Evans presentation, Director Victor Mendez asked why the Station expenditures show zero for insurance. Mr. Evans explained that the insurance for construction work that currently is underway, those insurance policies have been prepaid. He continued stating that policies will have to be renewed in the last year and a half of the construction

phase, but there are no expenses in the coming fiscal year for insurance.

Director Anita Romero asked who holds the mortgage on the Farley Building. Mr. Evans responded that ESD is the mortgage holder for the Farley Building. Richard Dorado, MSDC's project counsel, corrected Mr. Evans by stating that actually ESD granted the mortgage on the Farley Building, the holder is the Bank of New York Mellon. Director Romero stated that she wanted to be sure she didn't have any conflict issues. Mr. Dorado responded that Citi Bank holds certificates through Bank Mellon, and he further stated that the Bank of Mellon syndicated the loan to several institutions, including Citi Bank, so Citi Bank may hold all of the notes.

Director Romero responded by saying to Chairwoman Hedlund, she believed she should recuse herself with respect to the budget as it relates to the Farley Building capital expense authorization, based on Chairwoman Hedlund's question at the start of the meeting regarding conflicts. Chairwoman Hedlund responded that Director Romero's recusal is noted for the record.

Director Shobowale asked if the contracts for services were on call contracts; i.e. legal cost is for authorization if services are received and that some of the expenditures will not be expended unless there is a need for the services. Mr. Evans responded affirmatively. He further stated that the expenditures are an estimate in the event everything moves forward at once; this is what is anticipated to be the maximum cost. Mr. Evans also noted for the record,

contract justification pages which correspond to the budget tables. Mr. Evans made note of a discrepancy on the Moynihan Station Phase I contract justification spreadsheet which reflects that the New York City Transit and Long Island Railroad force account costs are handled as a deduction from the MTA grant to the Project, and are there for reporting purposes, and are not considered contracts, for the purpose of contract justification reporting process.

Chairwoman Hedlund noted with respect to legal cost she thought the cost estimate was a good conservative estimate, however, she stated, depending on what happens moving forward with Phase II and what transactions or series of transactions look like, the cost estimate could be substantially more, even though it wouldn't necessarily all be spent in the fiscal year. Mr. Evans responded that the estimate is based on moving to closing with Related-Vornado.

Chairwoman Hedlund then asked Mr. Evans to explain why the property management and maintenance costs have not increased over the last two years, even though there is more activity and a lot more people in the building. Mr. Evans responded by stating that the Corporation is reviewing costs, specifically the electricity costs to determine if there has been a significant increase as a result of more uses in the building. He continued by explaining that bills from OGS tend to lag significantly and therefore provides an opportunity to review the prior fiscal year. Mr. Evans explained that steam for the building goes on and off for the entire building, therefore there won't be a change in those charges. He continued stating that charges for building engineering time, OGS staff time, as well as any additional security, is all

paid for by any third-party user of the building and the Corporation recoups those costs. The electricity costs is currently the only cost that the Corporation does not recoup, however, Mr. Evans stated that given the premium rates charged for using the building, he believes it's okay not to charge for electricity usage. However if the review of the past fiscal year's billings determine that there has been a substantial increase, the Corporation will make an adjustment to that policy.

There being no other questions or comments by the Directors, Chairwoman Hedlund requested a motion for approval. She also noted for the record that Director Romero recuses herself from this vote. Upon motion duly made and seconded, the following resolution was adopted:

207. NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Approval of MSDC Operating Budget Spending Plan, Moynihan Station Phase 1 Annual Capital Expense Authorization and Farley Building Annual Capital Expense Authorization for FY 2014-15

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 – FY2014-15 Operating Budget Plan, the Moynihan Station Phase 1 – FY2014-15 Annual Capital Expense Authorization, and the Farley Building – FY2014-15 Annual Capital Expense Authorization 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.

* * *

Chairwoman Hedlund asked Mr. Evans to proceed with the next Agenda item, requesting authorization to renew insurance policies for the Farley Building.

In his presentation Mr. Evans discussed among other things, that the commercial and general liability policies for the Farley Building require renewal yearly. He explained that the Corporation uses ESD's insurance broker, Cool Insuring, based out of the Albany-Troy area, to solicit for these policies. He continued stating that the recommendation and best price for the commercial property policy is through the Corporation's current carrier, Affiliated Factory Mutual, for a \$250 million policy which includes terrorism. Mr. Evans explained that Affiliated Factory Mutual is willing to renew the policy for a flat rate increase from the prior year. He also explained that Affiliated Factory was the only carrier willing to insure the Farley Building for the entire \$250 million. No other carrier was willing to provide coverage for the entire \$250 million.

He continued stating that the \$25 million general liability policy includes umbrella with the Chubb Group, and they have provided the best price quote for this general liability policy which will increase about 5 percent in price over last year's price, and there will be a 2 and a half percent increase for both general liability and commercial property policies.

Following Mr. Evans' full presentation of the item, Chairwoman Hedlund entertained a motion for approval, upon motion duly made and seconded the following resolution was unanimously adopted:

208. 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 Renew Insurance Policies with Affiliated Factory Mutual and the Chubb Group of Insurance Companies; and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), the Corporation hereby finds Cool Insuring Agency, Inc., 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 \$795,204; 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.

* * *

Next, Chairwoman Hedlund requested that Mr. Evans present his President’s report. She noted for the record that this report was for the Directors’ information only and no vote would be required.

Mr. Evans’ report included an overview of the progress of construction on the Project. Mr. Evans discussed the highlights that have taken place since the last Directors’ meeting held on December 13, 2013, when the Project was in the middle of a construction moratorium at Penn Station, which took longer than anticipated due to the Super Bowl; however, Amtrak was cooperative during that period and they were able to work a couple of weekends to get some

additional work completed. He also mention that several weekend outages were cancelled due to weather conditions; however Amtrak and Long Island Railroad were cooperative in rescheduling the Project's weekend work as quickly as possible so that the Project remains on schedule.

Mr. Evans explained that the Project is in the middle of its critical year for Phase I. He mentioned the handout given to the Directors at the start of the meeting which Bruno Signorelli would address during his progress report on where the Project is in terms of steel erection in the C-Yard ventilation area and in the West End Concourse. Mr. Evans then asked Mr. Signorelli to discuss what has been done over the past quarter, and where the Project is headed in the coming calendar year.

Mr. Signorelli began by informing the Directors that the West End Concourse is approximately 48 percent complete. He reiterated what Mr. Evans had stated regarding cancellation of outages due to weather conditions, however since February 21 through the coming weekend there have been five weekend outages scheduled. He continued discussing the steel erection over platforms and tracks, and stating that 25 percent installation of the structural steel for the West End Concourse has been completed; and following the coming weekend outage 98 percent steel erection will have been installed in the C-Yard. He stated that work is also being done on the waterway system and demolition has started on the moat.

Lastly, Mr. Signorelli stated that major milestones are expected for the C-Yard such as, completion of all structural steel for the West End Concourse, the completion of all work associated with the C-Yard structures, all structural work for the North Plaza, the relocation of the 33rd Street southwest subway entrance from the sidewalks into the north Plaza and rehabilitation of the Post Office steps, as well as installation of structural members across 33rd Street which will require a three week closure of 33rd Street sometime in August.

Director Shobowale asked where the 8th Avenue subway station entrance will be relocated to. Mr. Signorelli responded that the entrance will be relocated to the New York Plaza which is in the moat area.

Director Shobowale also asked if there were any significant risks remaining for any of the deliverables that Mr. Signorelli talked about in his presentation. Mr. Signorelli and Mr. Evans explained that the necessary 32 outages are planned and mapped out for the year with Amtrak, so that the Project team knows exactly which weekends are assigned specific work tasks. Mr. Evans continued, stating that while major unanticipated weather conditions or other unforeseen emergency could certainly impact the schedule Amtrak has prioritized this work in their current year schedule.

There being no other questions or comments, Chairwoman Hedlund entertained a motion to conduct an Executive Session pursuant to paragraph (h) of Subdivision 1, Section 105 of the New York State Open Meeting Law, and more specifically to discuss real estate

negotiations issues relating to development of the James A. Farley Building. Upon motion duly made and seconded, the following resolution was unanimously adopted:

209. EXECUTIVE SESSION – Pursuant to Paragraph (h) of Subdivision 1 of Section 105 of the New York State Open Meeting 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 meeting was temporarily adjourned to conduct the 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 had been taken during Executive Session.

There being no additional business, the meeting was adjourned at approximately 4:25 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

ITEM 3

FOR CONSIDERATION

July 10, 2014

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization to Amend Contract with Jerome Haims Realty, Inc. for Valuation and Appraisal Services; and Authorization to Take Related Actions

Background

ESD took out a mortgage as part of its acquisition of the Farley Building in 2007. This mortgage was renewed in 2010 and again in February 2013. As part of the process of obtaining the original mortgage and securing its renewals in 2010 and 2013, MSDC procured Jerome Haims Realty, Inc. (“Haims”) to carry out the requisite valuation services.

ESD Directors authorized the retention of Haims, an independent appraiser, in June 2007 for an original contract amount not to exceed \$81,400. In April 2008, the ESD Directors authorized an amendment to the Haims contract to a total new amount of \$156,400. Then, in order to complete an appraisal update for the rollover of the original mortgage, the ESD Directors authorized an amendment to the Haims contract in October 2009, bringing the total contract amount to \$256,400. In October 2012, the MSDC directors authorized an increase in order to complete an appraisal update for the rollover that took place in February 2013, bringing in the total contract amount to \$285,000.

At this time, MSDC needs Haims to perform two tasks related to its previous work:

1. Update the Farley Building Appraisal
2. Update the PennWest Transferable Development Rights (TDRs) Appraisal

An update of the Farley Building appraisal is necessary as part of the process to roll over the mortgage in January 2015 as well as to inform real estate negotiations regarding the redevelopment of the building. An update of the Penn West TDRs appraisal is also necessary for the purposes of real estate negotiations.

It would be inefficient and inadvisable to retain an entirely new firm to carry out an update of these appraisals. Haims performed thorough bottom-up analyses less than two years ago in each instance. The existing appraisals will perform a solid foundation for an update based on the latest market comparables and economic indicators.

Because these will be updates, the price for this work is substantially discounted by Haims, which is beneficial to the Corporation. The costs proposed are significantly less than the costs paid for the original work and represent good value to MSDC/ESD. For example, in October 2012 Haims conducted its appraisal of the Farley Building for \$46,000. Haims will now fully update that work at a cost of \$34,000. For PennWest, Haims conducted the original appraisal at a cost of \$37,000 and will now update that work for \$28,500.

In order to make Haims available to update their appraisal work as deemed necessary and to advise MSDC during real estate negotiations that involve previous work performed by Haims, the MSDC Directors are requested to authorize MSDC to amend the existing JHRI contract by increasing the amount of such contract by \$68,750 to a new contract amount of \$353,750. The \$68,750 requested includes a 10% contingency ($\$34,000 + 28,500 = \$62,500 + 10\% = \$68,750$).

The contract, currently held by ESD, will be assigned to and assumed by MSDC.

Contract Summary

Consultant: Jerome Haims Realty, Inc. ("Haims")

Scope of Services: In June 2007, ESD directors authorized the retention of Haims, an independent appraiser with the experience and capacity to perform required appraisal and valuation work, to perform the necessary appraisal work to secure the original ESD mortgage of the Farley Building. The contract was amended in April 2008, October 2009 and again in October 2012. Appraisal services to date have included valuation of the Farley Building itself and of the Farley Building TDRs. Haims has performed satisfactorily under the existing contract. Updates of the appraisals of the Farley Building and the Farley Building TDRs intended for the PennWest site are now required. Therefore, MSDC staff recommends that the Haims contract be amended to permit such additional services.

Contract Amount: Current limit is \$285,000. Amendment will increase contract amount by \$68,750 to a new total contract amount of \$353,750.

A Contract Reporter Exemption has been sought for this amendment.

Funding Source

Funding for this contract will come from Moynihan Station pre-development funds provided by the Port Authority of New York and New Jersey under a previous funding agreement.

Environmental Review

The request to amend a consultant contract constitutes a Type II action as defined by the New York State Environmental Quality Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

Responsible Parties

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation’s policy related thereto, staff has: a) considered the ability of Haims to perform the services as set forth in these materials, and b) consulted the list of officers 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 Haims to be responsible.

Non-Discrimination and Contractor & Supplier Diversity

The Corporation’s non-discrimination and affirmative action policy will apply to this contract, but there are no DMWBE goals associated with this contract.

Requested Actions

The Directors are requested to authorize the Corporation to amend the existing contract with Jerome Haims Realty, Inc. for valuation and appraisal services to bring the total contract amount to \$353,750.

Recommendation

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

Attachment

Resolution

July 10, 2014

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contract with Jerome Haims Realty, Inc. for Valuation and Appraisal Services; and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Jerome Haims Realty, Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized Amend Existing Contract for valuation and appraisal services with Jerome Haims Realty, Inc. to increase total contract amount to \$353,750 for the purposes of additional valuation and appraisal services, substantially on the terms and conditions as set forth in the Materials; and be in 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.

* * *

ITEM 4

FOR CONSIDERATION

July 10, 2014

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 a Contract with AKRF Inc. for Environmental Consulting Services in Connection with the Moynihan Station Project

Background

In 2002, ESD Directors authorized ESDC to contract with AKRF, Inc. (“AKRF”), a New York City environmental consulting firm, to provide environmental consulting services for the Moynihan Project. The contract was amended pursuant to Director authorization in 2004 to: (a) expand the scope of work to include preparation of an environmental impact statement (“EIS”) for the Project as required under New York State Environmental Quality Review Act (“SEQRA”); and (b) to increase the amount of the contract by \$1,320,000. AKRF produced the Project’s Draft EIS (“DEIS”) in April 2006, and the Project’s Final EIS (“FEIS”), in August 2006.

In 2007, the Project’s scope expanded significantly to envision construction of a new arena within the western Annex of the Farley Post Office Building, thereby permitting complete renovation of existing Penn Station and off-site utilization of Penn and Farley development rights within a Moynihan zoning subdistrict to be created by The City of New York. ESD Directors authorized further contract amendments with AKRF to study the potential impacts of such an expanded project, increasing the amount of the contract to \$3,305,650.

Through 2009, ESD, MSDC, and PANYNJ worked on a revised Moynihan Project which would re-focus development efforts on a Moynihan train hall within the Farley Post Office. At ESD/MSDC direction, AKRF and its subconsultants analyzed the potential impacts of such a revised Project, and, accordingly, on January 15, 2009, the ESD Directors authorized an increase to the amount of the Moynihan Project contract with AKRF by an additional \$2,000,000, to a new aggregate limit of \$5,305,650.

MSDC needs to amend the existing AKRF contract so that AKRF may continue to advise the Corporation and perform supplemental tasks pertaining to the substantial environmental review and assessment work on the project already completed by the firm. Currently, there is only \$16,800 remaining on the AKRF contract. Without the authorization of additional funds

for the contract, MSDC will not be able rely on the experience of AKRF on the Moynihan Station project or on strategic advice or consultations by AKRF regarding any issues pertaining to the previously completed environmental review and assessment work.

This amendment does not envision that AKRF will perform substantially new environmental assessment work at this time beyond limited updates of the existing environmental documentation and strategic advice and consultation on environmental review issues pertaining to the project and the previously completed environmental review and assessment documentation. Should additional significant environmental review and documentation for the project be necessary, MSDC will return to the Board of Directors regarding the best options for pursuing that type of work.

In order to make AKRF available to update their environmental assessment work as deemed necessary, the MSDC Directors are requested to authorize MSDC to assume and amend the existing AKRF contract by the amount of \$45,000, inclusive of a 10% contingency, to a new contract amount of \$5,350,650. AKRF will bill the Corporation on an hourly basis according to the rate sheet submitted by AKRF as part of its proposal letter for these services.

In addition, it is requested that the AKRF contract be extended until December 31, 2015.

The contract, currently held by ESD, will be assigned to and assumed by MSDC.

Contract Summary

Consultant: AKRF, Inc. (“AKRF”)

Scope of Services: AKRF will offer environmental review strategy planning services to most effectively comply with the regulatory and environmental review process, including consultation services pertaining to potential modifications to the Moynihan Station General Project Plan to reflect any changes to Phase II of the project from what was previously considered. This may include some updated technical analyses and documents as required under New York State Environmental Quality Review Act (SEQRA).

Contract Amount: Current limit is \$5,305,650. Amendment will increase contact amount by \$45,000, inclusive of 10% contingency, to a new total contract amount of \$5,350,650.

A Contract Reporter Exemption has been sought for this amendment.

The environmental assessment work of AKRF on the Moynihan Project to date has been of consistently high quality delivered on tight timeframes. Further, by reason of its prior work on the Project, AKRF has accumulated a wealth of experience and information not readily available elsewhere. AKRF remains a premier environmental consulting firm in the New York City region

and has provided environmental consulting services to ESDC and many ESDC subsidiaries for many years. No other New York City environmental consultant known to ESDC staff has the resources, experience, database, staff depth, and proven reliability of AKRF, which will be critical to successful completion of requisite supplemental reviews. To preserve the continuity of this valuable expertise, staff recommends that the amount of the existing contract with AKRF for the Project be increased by \$45,000, inclusive of a 10% contingency.

Funding Source

Funding for this contract will come from Moynihan Station pre-development funds provided by the Port Authority of New York and New Jersey under a previous funding agreement.

Environmental Review

The request to amend a consultant contract constitutes a Type II action as defined by the New York State Environmental Quality Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

Responsible Parties

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

Non-Discrimination and Contractor & Supplier Diversity

ESDC's Non-Discrimination and Affirmative Action Policy will apply.

Requested Actions

The Directors are requested to authorize the Corporation to amend the existing contract with AKRF, Inc. for environmental consulting services to bring the total contract amount to \$5,350,650.

Recommendation

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

Attachment

Resolutions

July 10, 2014

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contract with AKRF, Inc. for Environmental Consulting Services; and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds AKRF, Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized Amend Existing Contract for environmental consulting services with AKRF, Inc. to increase total contract amount to \$5,350,650 for the purposes of additional environmental consulting services and to extend the contract until December 31, 2015, and substantially on the terms and conditions, as set forth in the Materials; and be in 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.

* * *

ITEM 5

FOR CONSIDERATION

July 10, 2014

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 Construction Contract with Skanska USA Civil Northeast Inc. (“Skanska Civil”) to Increase the Authorized Contingency

CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Contractor:	Skanska USA Civil Northeast Inc.
Scope of Services:	Construction Phase 1 Moynihan Station—West End Concourse & Related Train-shed Work; C-Yard Fan Room Structure
Contract Term:	June 1, 2012 to December 31, 2016
Contract Amount:	Not to exceed \$170,011,000 + \$17,001,100 contingency
Proposed Amendment:	Not to exceed \$9,812,743
New Proposed Total Contract Amount:	\$196,824,843

II. Funding Source(s)

Original contract funded by a combination of FRA and MTA funds.

Contract amendment will be funded by a combination of FRA grant funds budgeted for additional overall project contingency and Management Reserve (\$7,335,088) and local non-Phase 1 sources set aside for maintenance of the Farley Building (\$2,477,655).

III. Background

The Moynihan Station Project will build a new intercity train hall for Amtrak within the Farley Post Office Building.

Phase 1 consists of three sub-projects:

- West End Concourse Expansion and related Railroad work;
- Platform Ventilation System;
- Connecting Corridor and related Subway work.

Phase 1 is a pre-requisite to Phase 2, which is the construction of a new Amtrak train hall within the James A. Farley Post Office Building.

The contract for the first sub-project, the expansion of the West End Concourse, was approved by the MSDC Board on May 9, 2012 with the contract awarded to Skanska USA Civil Northeast Inc. at a cost of \$147,500,000.

In January 2013, the Directors authorized a Change Order to the contract in the amount of \$22,261,000 + \$2,261,000 contingency (10%) for the construction ventilation system fan room structures over C-Yard. This work was able to progress due to the award of a High Speed Rail grant to MSDC in the amount of \$30 million by the Federal Railroad Administration in September 2012. The other work funded by this grant was the Connecting Corridor Sub-project, which was bid out as a separate construction contract.

IV. Description of Proposed Amendment

Authorization is now sought to amend the contract with Skanska USA Civil Northeast Inc. for the construction of the West End Concourse Expansion and the fan room structures over C-Yard in order to increase the overall authorized construction contingency by \$9,812,743 to cover costs incurred as a result of Unforeseen Conditions, design changes required during construction and Required Farley Building Work encountered during the construction period.

Skanska is approaching the limit of the overall authorized contract contingency of \$17,001,100.

While West End Concourse Expansion sub-project is advancing within the authorized contract amount, the ventilation structures in C-Yard have required a significant use of contingency due to Unforeseen Conditions. In particular, the fracturing of the northern Penn Station retaining wall during the installation of the fan room steel required major design changes, resulted in a delay of several months, and necessitated increased material and labor costs. The contingency budgeted for the C-Yard fan room structures was \$2,261,000, but an additional \$3,835,088 was required to complete this work. The

Directors were apprised of this circumstance in July 2013, when the rock wall conditions became apparent and affirmed the approach proposed by MSDC staff and Port Authority Engineering. The additional funds from C-Yard were drawn from the overall contract contingency of \$17,001,100 since the C-Yard work already had been added to the contract as Change Order in January 2013.

In order to complete the Connecting Corridor Sub-project, specific work within the train-shed was required. Amtrak will not allow more than one MSDC construction contractor within the train-shed. And the train-shed work required for the Connecting Corridor was too close in proximity to the work already being performed by Skanska in the train-shed and therefore logistically impossible for another contractor to attempt. In addition, by removing the more complicated and risky train-shed work from the Connecting Corridor Sub-project bid documents, MSDC was able to put documents out to bid that were able to attract a wider array of bidders. The slate of contractors with the experience necessary to work within the train-shed is very limited. Therefore the train-shed work necessary to complete the Connecting Corridor Sub-project was shifted to the Skanska contract so that the Connecting Corridor Sub-project could be separately and competitively bid. This work totaled \$3,500,000 and was carried out utilizing a portion of the \$17,001,100 in authorized Skanska contract contingency.

Lastly, during the construction period to date certain Required Farley Building Work has been necessitated either as a result of impacts from construction on the Farley Building or for the need to carry out certain maintenance and improvement work that could not be accomplished by another contractor while Skanska was mobilized within the building. The commitments for Required Farley Building Work total \$2,477,655 at this time. Funds for the Required Farley Building Work are coming from non-Phase 1 local sources reserved for the maintenance of the Farley Building.

Therefore, authorization is sought to amend the Skanska contract to increase the overall contingency by \$9,812,743, which is the sum of the extra C-yard work due to Unforeseen Conditions, the train-shed work required for the Connecting Corridor Sub-project and the Required Farley Building Work. Funds for this additional contingency will be drawn from the FRA 'Appropriations' grant, which is partly budgeted for overall project contingency and Management Reserve. And all Required Farley Building Work will be funded out of non-Phase 1 local sources set aside for the maintenance of the Farley Building.

All Change Orders are reviewed first by an independent estimator and then by the Port Authority Engineering Department, as specified in the MSDC-PANYNJ Consulting Services Agreement. Any Change Order in excess of \$250,000 must be personally authorized by the MSDC President.

A Contract Reporter Exemption has been submitted for this contract amendment. At this time, MSDC staff and PANYNJ Engineering anticipate that the construction work for West End Concourse Expansion Sub-project will be carried out within the original 10% authorized contingency. The authorization herein will replenish the WEC Expansion contingency which was shifted to cover other additional project work.

V. Summary of Contractor Selection Process

- Request for Qualifications for pre qualifying contractors was advertised in NYS Contract Reporter May 20, 2011. Contractors were qualified based upon Experience of Firm, Qualifications of Project Manager, Specific Work experience critical to the project, Bonding and Financial Capacity, Safety record.
- Twelve firms responded MSDC Board pre qualified seven contractors on August 11, 2011.
- After prequalification selection criteria was low bid.
- Original bid packages made available to pre qualified contractors on September 30, 2011. Seven Bids received on January 12, 2012. All bids rejected on February 3, 2012. Revised package released March 1, 2012. Bids opened April 26, 2012. Three bids received and Skanska USA Civil Northeast Inc was low bidder, and MSDC Board approved award on May 9, 2012.
- Skanska USA Northeast Civil Inc was reviewed and found responsible in both the MSDC Board action of August 11, 2011 and May 9, 2012. This included a review by PANYNJ staff in addition to consulting the list of non-responsible bidders and debarred offenders maintained by the NYS Office of General Services.

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

VI. Scope of Work

The amendment will increase the overall authorized contract contingency by \$9,812,743 to allow for Change Orders to the West End Concourse Expansion Sub-project encountered as a result of Unforeseen Conditions, design changes and changes in the field. All Change Order must be reviewed and authorized by PANYNJ Engineering as stipulated by the Consulting Services Agreement, and all Change Orders in excess of \$250,000 must be personally authorized by the MSDC President.

VII. Contract Term, Price and Funding

This change order does not impact the original contract schedule; the change order will be paid upon completion.

Funding for the additional contingency will be provided through the FRA 'Appropriations' grant. In addition, all Required Farley Building Work is being funded out of local, non-Phase 1 sources set aside for the maintenance of the Farley Building.

VIII. Non-Discrimination and Contractor & Supplier Diversity

MSDC's DBE/MBE/WBE Program Plan will apply to this contract. Skanska USA Civil Northeast Inc. will be required to use its best efforts to achieve a Minority/Women's Business Enterprise participation goal of 20% 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.

For the base project Skanska USA Civil Northeast Inc. has submitted a plan to achieve up to 21% participation.

IX. Environmental Review

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

X. Requested Actions

The Directors are requested to authorize the Corporation to amend the construction contract with Skanska USA Civil Northeast, Inc. to increase the authorized contingency by an amount of \$9,812,743, for a total contract amount of \$196,824,843, as set forth in these materials.

XI. Recommendation

Based on the foregoing, MSDC staff recommends approval of the requested actions. Pursuant to the Board-approved consulting services agreement between MSDC and PANYNJ and the grant conditions set forth by USDOT/FRA, the Port Authority has reviewed and affirmed this request.

XII. Attachment

Resolution

July 10, 2014

NEW YORK CITY (New York COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Construction Contract with Skanska USA Civil Northeast to Increase the Authorized Contingency 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 Skanska USA Civil Northeast Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the construction contract with Skanska USA Civil Northeast Inc. is amended to increase the authorized contingency for an additional amount not to exceed \$9,812,743, resulting in a new contract amount for a total not to exceed one hundred ninety-six million eight hundred twenty-four thousand eight hundred forty-three dollars (\$196,824,843) 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.

* * *

ITEM 6

FOR CONSIDERATION

July 10, 2014

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 Enter into Contract with Skadden, Arps, Slate, Meagher & Flom LLP for Legal Services and Authorization to Take Related Actions

CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Contractor:	Skadden, Arps, Slate, Meagher & Flom LLP
Scope of Services:	Legal services related to the planning, financing, and documentation of Phase 2 of the Project
Contract Term:	Three years with two one-year renewal options
Contract Amount:	Not to exceed \$250,000

II. Funding Source(s)

Contract funded by Phase 2 pre-development funds provided by the Port Authority of New York and New Jersey (“PANYNJ”). These costs are also potentially federally reimbursable.

III. Background

With Phase 1 of the Moynihan Station Project (work beneath Farley) advancing on schedule towards completion, Moynihan Station Development Corporation (“MSDC” or the “Corporation”), in coordination with the PANYNJ, seeks to accelerate the planning and construction of Phase 2 of the Project which will include redevelopment of Farley as Moynihan Station, the development of other portions of Farley, and the disposition of development rights associated with Farley. As part of this process, MSDC and New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) are: engaged in negotiations with a developer for the Project, Moynihan Station R/V;

developing interim uses for certain vacant portions of Farley; and planning for the disposition of the development rights associated with Farley. The Project requires legal expertise and response times that cannot be provided by in-house counsel alone. The Project also requires the services of sophisticated legal counsel to assist in-house counsel and to participate actively in planning and negotiations related to Phase 2 and in the development of complicated legal documentation with multiple parties having varying interests.

IV. Summary of Contractor Selection Process

MSDC is an ESD subsidiary. ESD, for itself and on behalf of its subsidiaries, pre-qualified counsel on September 20, 2012 in selected areas of expertise, including New York law firms specializing in real estate, land use, and related litigation—making them available for legal work on an as-needed basis, after approval of individual retention contracts, without need for further public solicitation. This action was taken to permit ESD and its subsidiaries to respond to project needs expeditiously, while having available the benefits of a broad solicitation of qualified outside law firms. This pre-qualified counsel list will expire on September 20, 2016.

MSDC staff and ESD counsel staff reviewed this list and based upon recommendations from previous public/private real estate development experience with ESD and its subsidiaries, invited the following firms from the pre-qualified list to express interest in the project: Carter, Ledyard & Millburn, LLP; Shearman & Sterling; Kramer, Levin, Naftalis & Frankel, LLP (“Kramer Levin”); and Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden”). Three firms responded: Shearman & Sterling; Kramer, Levin; and Skadden. MSDC and ESD staff then interviewed the three firms. Skadden was the initial first choice, but was unable at that time to accept ESD’s standard rates for legal services. ESD retained Kramer Levin. That firm has withdrawn from further work on the Project. Staff has contacted Skadden, and the firm has confirmed to staff that it will to accept ESD’ standard rates.

Staff recommends the retention of Skadden on: (a) the demonstrated real estate expertise of the firm; (b) the prior experience of Skadden in working with ESD staff on several complicated development projects; (c) prior experience on the Moynihan Station project; (d) the interview process; and (e) rate structure. Skadden is a full-service firm with extensive experience in complicated real estate and public/private transactions. Skadden has served ESD as legal counsel on a number of high profile large scale, complex and sensitive projects, including the Javits Center redevelopment, the Queens West planned community and the Atlantic Yards project. ESD staff members who have worked with the Skadden team speak highly of the firm’s talent and professionalism. Neil Rock, a firm partner, has worked on the Atlantic Yards project for ESD as well as the Javits Center redevelopment and the Queens West project for ESD subsidiaries and has a strong grasp of ESD’s statutory powers and their application to

public/private real estate development projects. He will be the principal lawyer for the firm's work on the Project. He will oversee the work of the firm's lawyers and other staff as appropriate. ESD staff reports that the firm's past services have been excellent and timely.

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

V. Scope of Work

Skadden will provide legal services related to the planning, financing, and documentation of Phase 2 of the Project, including participation in negotiations with a developer for the Project, Moynihan Station R/V, and planning for the use of the development rights associated with Farley on other sites.

VI. Contract Term, Price and Funding

Funding for this contract will be provided by Phase 2 pre-development funds provided by PANYNJ. These costs are also potentially federally reimbursable. The initial term of the contract will be for three years with two one-year renewal options.

VII. Non-Discrimination and Contractor & Supplier Diversity

MSDC's DBE/MBE/WBE Program Plan will apply to this contract. Skadden will be required to use its best efforts to achieve a Minority/Women's Business Enterprise participation goal of 20% 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.

In addition to Skadden, Bryant Rabbino LLP, a New York State certified Minority-Owned Business Enterprise will separately provide legal services related to the construction, leasing, and general real estate matters for Phase 2 of the Project, including construction contracts, negotiating and documenting interim uses of the Farley Building, negotiation with current and future tenants of Farley Building, and general real estate matters.

VIII. Environmental Review

ESD staff, on behalf of MSDC, has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this request.

IX. Requested Actions

The Directors are requested to authorize the Corporation to enter into a legal services contract with Skadden, Arps, Slate, Meagher & Flom LLP, for a total contract amount of \$250,000, as set forth in these materials.

X. Recommendation

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

XI. Attachment

Resolution

July 10, 2014

NEW YORK CITY (New York COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Enter into Contract with Skadden, Arps, Slate, Meagher & Flom LLP for Legal Services and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Skadden, Arps, Slate, Meagher & Flom LLP to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a contract with Skadden, Arps, Slate, Meagher & Flom LLP for legal services, the cost of which is not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000) for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that 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.

* * *

ITEM 7

FOR CONSIDERATION

July 10, 2014

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 Enter into Contract with Bryant Rabbino LLP for Legal Services and Authorization to Take Related Actions

CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Contractor:	Bryant Rabbino LLP
Scope of Services:	Legal services related to the construction, interim uses, leasing and general real estate matters for Phase 2 of the Project
Contract Term:	Three years with two one-year renewal options
Contract Amount:	Not to exceed \$200,000

II. Funding Source(s)

Contract funded by pre-development funds for Phase 2 of Moynihan Station provided by the Port Authority of New York and New Jersey (“PANYNJ”).

III. Background

With Phase 1 of the Moynihan Station Project (work beneath Farley) advancing on schedule towards completion, Moynihan Station Development Corporation (“MSDC” or the “Corporation”), in coordination with PANYNJ, seeks to accelerate the planning and construction of Phase 2 of the Project which will include redevelopment of Farley as Moynihan Station, the development of other portions of Farley, and the disposition of development rights associated with Farley. As part of this process, MSDC and New York State Urban Development Corporation d/b/a Empire State Development (“ESD”): are developing interim uses for certain vacant portions of Farley; will be dealing with current and future tenants and leases; and letting contracts for construction. The

Project requires legal expertise and requires response times that cannot be provided by in-house counsel alone. The Project now requires the services of experienced real estate legal counsel in order to assist in-house counsel and to participate actively in planning and negotiations related to Phase 2, including planning, negotiating, and documentation related to interim uses for certain vacant portions of Farley, current and future tenants and leases, and contracts for construction.

IV. Summary of Contractor Selection Process

MSDC is an ESD subsidiary. ESD, for itself and on behalf of its subsidiaries, pre-qualified counsel on September 20, 2012 in selected areas of expertise, including New York law firms specializing in real estate, land use, and related litigation—making them available for legal work on an as-needed basis, after approval of individual retention contracts, without need for further public solicitation. This action was taken to permit ESD and its subsidiaries to respond to project needs expeditiously, while having available the benefits of a broad solicitation of qualified outside law firms. This pre-qualified counsel list will expire on September 20, 2016. Bryant Rabbino LLP (“Bryant Rabbino”), a State certified Minority Business Enterprise, was one of the firms pre-qualified.

Staff recommends the retention of Bryant Rabbino based on: (a) its demonstrated real estate expertise; (b) an interview with the firm partner who will be responsible for the work; (c) the need for experienced real estate counsel to work on general real estate matters; and (d) the firm’s acceptance of ESD’s “Maximum Rate Structure for Outside Counsel”. Bryant Rabbino has extensive experience in real estate and public/private transactions. The firm has worked with ESD legal staff in the representation of ESD’s subsidiary, Harlem Community Development Corporation (“HCDC”), on five low income housing tax credit projects in which HCDC has an ownership interest. The work included determining the legal, regulatory and tax consequences to the various involved entities, including the limited partnerships, lenders, State and City agencies both in the context of a proposed transfer of one of the sites to the general partner of the operating limited partnership that operates another of the sites and consideration of options for providing a capital infusion to all of the sites for necessary capital improvements. ESD and HCDC staffs speak highly of the firm’s talent, responsiveness, and professionalism. Ann Rabbino is the firm partner who will be responsible for the work, and she understands ESD’s statutory powers and has extensive experience in commercial leasing and construction contracts. She will oversee the work of the firm’s other lawyers and staff.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation’s policy related thereto, staff has: a) considered proposed contractor’s ability to perform the services provided for in the proposed contract; and b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

V. Scope of Work

Bryant Rabbino will provide legal services related to the construction, leasing, and other general real estate matters related to of Phase 2 of the Project.

VI. Contract Term, Price and Funding

Funding for this contract will be provided through pre-development funds for Phase 2 of Moynihan Station provided by PANYNJ. The term of the contract is three years with two one-year renewal options.

VII. Non-Discrimination and Contractor & Supplier Diversity

MSDC's DBE/MBE/WBE Program Plan will apply to this contract. The project generally requires contractors to use their best efforts to achieve a Minority/Women's Business Enterprise participation goal of 20% 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.

Bryant Rabbino LLP is a New York State certified Minority-owned Business Enterprise and will provide legal services related to the construction, leasing, and other general real estate matters related to of Phase 2 of the Project, including construction contracts, negotiating and documenting interim uses of the Farley Building, negotiation with current and future tenants of Farley Building, and general real estate matters.

VIII. Environmental Review

ESD staff, on behalf of MSDC, has determined that the requested action constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this request.

IX. Requested Action

The Directors are requested to authorize the Corporation to enter into a legal services contract with Bryant Rabbino, LLP for a total contract amount of \$200,000, as set forth in these materials.

X. Recommendation

Based on the foregoing, MSDC staff recommends approval of the requested actions. Pursuant to the Board-approved consulting services agreement between MSDC and PANYNJ and the grant conditions set forth by USDOT/FRA, the PANYNJ has reviewed and affirmed this request.

XI. Attachment

Resolution

July 10, 2014

NEW YORK CITY (New York COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Enter into Contract with Bryant Rabbino LLP for Legal Services and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Bryant Rabbino LLP to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a contract with Bryant Rabbino LLP for legal services, the cost of which is not to exceed Two Hundred Thousand Dollars (\$200,000) for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that 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.

* * *