

# 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 –38<sup>th</sup> Floor  
New York, New York 10017

Friday

September 26, 2014 – 10:00 a.m.

### PROPOSED AGENDA

#### CORPORATE ACTION

1. Approval of the Minutes of the July 10, 2014 Directors' Meeting

#### FOR INFORMATION

2. President's Report (Oral Report)

#### FOR CONSIDERATION

3. Authorization to Amend the Contract with Skidmore, Owings & Merrill LLP for Architectural, Engineering, Design, Development, and Related Services; and Authorization to Take Related Actions
4. Authorization to Amend a Contract with PB Americas, Inc. for Architectural, Engineering, Design, and Construction Phase Services; Authorization to Take Related Actions

#### EXECUTIVE SESSION

5. 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  
37<sup>th</sup> Floor Conference Room  
New York, New York 10017

**July 10, 2014**

**MINUTES**

**In Attendance**

**Directors:**

Karen Hedlund (Acting Chair) (via video conference)  
Anita Romero  
Tokumbo Shobowale  
Paul Williams

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

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  
Mehul Patel, Chief of Staff  
Carlos Otero, Vice President – Contract Admin./Subsidiary  
Finance  
Harold Rojas, Manager of Accounting  
Sankar Singh, Manager – Contract Audit & Admin.  
Margaret Tobin, Chief Financial Officer

**Present for the  
Moynihan Station**

**Development Corporation:**

Michael Evans, President  
Regina Stephens, Acting Corporate Secretary  
Thelma Washington, Executive Secretary  
Kirk Logan, Intern

**Present for FRA/USDOT:**

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

**Also Attending:** Patrick Higgins, PANY&NJ  
Andrew Lynn, PANY&NJ  
Jacqueline McCarthy, PANY&NJ  
Bruno Signorelli, PANY&NJ  
Anthony Cracchiolo, STV

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order by Karen Hedlund at approximately 3:36 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.

Director Anita Romero stated that she thought she should recuse herself on the Agenda item regarding Jerome Haims Realty. Director Romero explained that, because Citi Group holds a participation interest in the mortgage for the James A. Farley Building (“Farley Building”), she would recuse herself from this item, although as a technical legal matter she did not believe it necessary.

Chairwoman Hedlund asked if a quorum was available for a vote without Director Romero. Michael Evans responded yes, there would be a quorum.

Next, Chairwoman Hedlund requested a motion for approval of the meeting minutes of the March 20, 2014, Directors meeting. Upon motion duly made and seconded the following resolution was unanimously adopted:

210. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 20, 2014 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

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RESOLVED, that the Minutes of the meeting of the Corporation held on March 20, 2014, 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.

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Chairwoman Hedlund asked that Michael 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 began by explaining to the Directors that he wanted to give his President's Report first to give an update on where the Project is in construction since the Agenda has an item regarding the construction contract. He stated that he was pleased with the progress on the Project and believed that the Project is currently well into the critical eighteen-month window that had been a topic of discussion for the past several years.

Mr. Evan then asked Bruno Signorelli of Port Authority of New York and New Jersey (“Port Authority”) to give his progress report on the Project since the last Directors meeting and what is anticipated to take place over the next several months.

Bruno Signorelli’s report included among other things, an update on the work performed during the eight (8) weekend outages. Mr. Signorelli explained that the first of another eight, construction weekend outages would begin in the coming week and at the conclusion of these upcoming weekend outages it is anticipated that 75 percent of the steel for the West End Concourse will have been installed, leaving the remainder of the steel to be installed through January. He continued stating that following the steel installation, fireproofing would begin along with permanent closure, which will take place from January through June.

Mr. Signorelli stated that the C-Yard work is scheduled to be completed by Mid-August of 2014. He stated that the North Plaza demolition on Eighth Avenue and 33<sup>rd</sup> Street has been completed, and 35 percent of the North Plaza stairs have been installed. The stone steps on the north side of the Plaza have been removed for refurbishing off-site and currently Skanska is preparing the surfaces to be worked on within the next week. Mr. Signorelli continued, stating that the North façade at the North Plaza has been removed to facilitate installation of window entrances in and above canopies, and completion of the North Plaza is expected by the end of the year including the relocation of the southwest subway entrance on 33<sup>rd</sup> Street.

Next, Mr. Signorelli gave the progress report on the Connecting Corridor Project. He stated that the Connecting Corridor is about 20 percent complete. Fifty percent of the temporary decking has been installed. He continued, reporting that demolition has started within the Connecting Corridor and the south subway stairs which are currently closed. He explained that Skanska has developed a plan which will extend the south land closure on 33<sup>rd</sup> Street to include the south sidewalk, allowing Skanska to install the new framing for 33<sup>rd</sup> Street without the full three weeks of closure of the sidewalk as per their contract. He further stated that New York City Department of Transportation has approved this new plan, and the closure and work has already begun. Mr. Signorelli stated that the Project team has reached out to the 34<sup>th</sup> Street Partnership and they have also reached out to the businesses and community and all have said they preferred closing the street fully for three weeks.

Lastly, Mr. Signorelli stated that it is anticipated that the months of August and September will be extremely productive with a lot of construction in place.

Following Mr. Signorelli's report Margaret Tobin, ESD's CFO, asked what the off-site refurbishing entailed and whether it's granite or marble. Mr. Signorelli responded that the off-site refurbishing entails power washing, treading and repairing any chips or cracks to the granite.

Ms. Tobin then inquired about the method used to repair the crack and chips in the granite. Mr. Signorelli responded that repairs are made by filling in or cutting pieces out and

replacing it. She asked if granite is used when filling in or replacing pieces. Mr. Signorelli responded yes, granite is used when filling in or replacing pieces is required.

Following Mr. Evans' and Mr. Signorelli's progress report, Chairwoman Hedlund requested that Mr. Evans present the next Agenda item requesting authorization to amend the contract with Jerome Haims Realty, Inc. ("Jerome Haims") for valuation services. She also noted for the record that Director Anita Romero had recused herself from voting and discussion on this item.

In his presentation Mr. Evan explained that the Corporation is requesting authorization to update the appraisal of the Farley Building property in order to renew the mortgage at the end of the year. He continued that Jerome Haims would be providing these appraisal services at a substantial discounted rate. In addition to the appraisal, Jerome Haims will also provide and update on the transferrable Development Rights appraisal on the Penn West site.

Mr. Evans explained that appraisals were done on both sites two years ago, and given the market's current circumstance an updated valuation can assist the Corporation in making informed decisions going forward in real estate negotiations. Lastly, he stated that the cost for both appraisals is \$68,750, bringing the total amount of the contract to \$353,750.

Following Mr. Evans' presentation Director Paul Williams asked about the timeline for completion of appraisals. Mr. Evans responded that a Notice to Proceed would be issued

immediately for Jerome Haims. He continued stating that work for the TDR update appraisal would start first and then work on the appraisal for the Farley Building would begin in early Fall.

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

211. 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

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BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds 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.

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Mr. Evans presented the next Agenda items requesting authorization for the Corporation to amend a contract with AKRF for environmental consulting services.

In his presentation Mr. Evans explained that AKRF has been a consultant on the Project since the late 1990s and has provided all of the environmental work required for the Project's General Project Plan. He continued stating that AKRF's contract is about to expire having only \$18,000 left on the contract. The Corporation is requesting to amend this contract as a prudent measure to ensure there are sufficient funds left on the contract in order for AKRF to provide supplementary services based on their prior environmental work. He explained to the Directors that no new environmental work is anticipated, and any new major environmental work would be brought to the Board for approval as a new contract. Mr. Evans stated that the amendment is for a relatively small amount, \$45,000, making the total amount of AKRF's contract \$5,350,000.

Chairwoman Hedlund asked if the date of the contract will be extended. Mr. Evans responded that the date of the contract would be extended to the end of December 31, 2015. She also asked if there were any other changes to the terms and conditions, Mr. Evans responded there were no changes in the terms and conditions. He further stated that AKRF and Jerome Haims contracts would be paid out of the Phase 2 funds which were set aside by the Port Authority at the time the building was purchased.

Director Anita Romero stated that there was another change, in the party to the contract. Mr. Evans stated that she was correct and explained that the AKRF's contract originated with ESD, and as part of the Corporation's process to consolidate all contracts pertaining to the station redevelopment under MSDC, the action taken today will authorize

MSDC to assume and amend the existing AKRF contract.

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

212. 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

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BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds 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.

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The next Agenda item was presented by Mr. Evans, requesting authorization by the Corporation to amend the construction contract with Skanska USA Civil Northeast.

Mr. Evans began his presentation by recapping the Directors’ action in the previous summer to affirm the strategy developed by MSDC and the Port Authority engineering and contingency relating to unforeseen conditions in the C-Yard. He continued stating that the

work for the unforeseen conditions was accomplished as a change order which went into effect in January 2013 to the main West End Concourse contract. As a result of the retaining wall problem the Project team determined that additional funds would be required beyond the contingency budgeted for the C-Yard work. Mr. Evans continued explaining now that the C-Yard work has been completed the West End Concourse contingency funds must be replenished in order for the construction to continue and to move forward with the construction contract. He stated that the amendment includes the delta on C-Yard work, a change order for Connecting Corridor work in the train shed and lastly, required work in the Farley Building over the last two (2) years. Mr. Evans also noted that the Farley Building work will be covered by Non-Phase 1 local resources set aside for the Farley Building and will come out of the Phase 1 Management Reserve account which is a combination of the FRA administered Federal Grants and MTA funds set aside for the Project.

Following Mr. Evans' presentation Director Romero asked Mr. Evans if he was comfortable with the adequacy of the contingency. Mr. Evans responded that a risk analysis has been conducted by the Port Authority risk team and a summary of the risk analysis will be discussed during Executive Session. He stated that he felt confident with the team's goal which is for this to be the only amendment to the contract, and he is very confident that this amendment will take the Project through next year to the final end of the contract. Mr. Evans informed the Directors that a discussion regarding the budget will happen when milestone number one is reached, which is scheduled for next summer, and entails the full enclosure of the West End Concourse. He also stated that once milestone number one has been reached,

most of the track outages will have been completed which are the biggest risk factors on the project as well as the biggest risk factors for project delays. He concluded explaining that once the milestone is reached, risk factors shrink substantially and as a result the need for additional contingency recedes substantially as well.

Following questions and comments by the Directors, Chairwoman Hedlund entertained a motion for approval. Upon motion duly made and seconded the following resolution was unanimously adopted:

213. 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

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

RESOLVED, that in accordance with the Materials, the 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.

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Mr. Evans presented the next two related Agenda items.

Mr. Evans explained that the two items pertained to retaining counsel to advise the Corporation on real estate transaction work. He stated that the Corporation had interviewed the law firm of Skadden Arps for the real estate transaction work. Skadden Arps is one of the firms on the pre-qualified counsel list developed by ESD. Mr. Evans continued, stating that Skadden is a very talented firm which has been demonstrated by partner Neil Rock, who is successfully and strategically handling negotiations for ESD on the Atlantic Yards Project. He explained that the Corporation has negotiated that Skadden Arps will work at ESD's rates up to \$250,000 or up to the signing of the term sheet of the developer, upon which an imprest account will be established and Skadden Arps will then operate at market rates similar to other ESD development Projects. Mr. Evans stated in order to satisfy the use of M/WBE firms on professional service contracts, the Corporation has arranged for the firm of Bryant Rabbino to serve as counsel on some of the transaction work. He further stated that Bryant Rabbino will be working in cooperation with Skadden Arps and working for MSDC.

Following Mr. Evans' presentation Director Shobowale asked in terms of division of labor, who makes the determination of what services the second firm will provide. Mr. Evans responded that MSDC plans to consult with ESD's legal team to determine the appropriate division of services.

Director Romero asked if there is a fee cap arrangement with Skadden Arps. Elizabeth Fine, ESD's and the Corporation's General Counsel, responded that Skadden Arps would work at ESD's rate up to \$250,000. She continued, explaining that one of the benefits of having

Bryant Rabbino involved is that if Skadden Arps drops out there will be another firm that is already involved and the work can continue.

Director Romero then asked if the Corporation expects \$250,000 to be enough for Skadden Arps services to obtain the term sheet. Mr. Evans responded affirmatively. Director Romero asked if that expectation depend on negotiations. Mr. Evans again responded affirmatively.

Director Shobowale asked if anything beyond the term sheet depends on the size of this deal. Mr. Evan explained that it depends on the type of negotiations and the amount of documents and if it's something that can be negotiated in a few months. He continued, explaining that the Corporation has set the contract limit at \$250,000 and will bring the contract back to the Board for approval should it be necessary to amend the contract.

There being no other questions or comments by the Directors, Chairwoman Hedlund entertained a motion for approval of the contracts for both Skadden Arps and Bryant Rabbino.

Upon motion duly made and seconded the following resolutions was unanimously adopted:

214. 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
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BE IT RESOLVED, that based on the materials presented at this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds 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.

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215. 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

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BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds 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.

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Following the vote Director Shobowale asked if the arrangement being used between Skadden Arps and Bryant Rabbino has been used by ESD on other projects. He stated that he thought it was a good arrangement to have a high level firm like Skadden Arps and a MWBE component and cut cost. Mr. Evans responded that the MWBE issue is something the Corporation wanted to address, as a result of the issue being raised at the time of solicitation for legal counsel. He continued, stating that he thought Bryant Rabbino had worked in a sub-counsel arrangement

before. Mr. Evans deferred to Mr. Dorado who stated that Bryant Rabinno is working on the Urban League Project on 125<sup>th</sup> Street and Lenox Avenue for ESD, however, he's not sure that they are sub-counsel on that Project. He stated that he believes Bryant Rabinno is reporting directly to ESD. Mr. Dorado continued, explaining there now are a number of MWBE and MBE firms that have sophisticated counsel who are able to assist ESD on this Project as well as other ESD projects, and ESD is expanding by trying this type of structure where it is effective.

Director Shobowale requested that the Corporation provide feedback to the Board on how this type of structure goes in terms of project management and cost allocation for future work. Mr. Evans stated that he thought it was a very good idea and he would provide the Board with feedback.

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 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:

216. EXECUTIVE SESSION – Pursuant to Paragraph (h) of Subdivision 1 of Section 105 of the New York State Open Meeting Law

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

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The 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 4:27 p.m.

Respectfully submitted,

Regina Stephens  
Acting Corporate Secretary

# ITEM 3

FOR CONSIDERATION

September 26, 2014

TO: The Directors

FROM: Michael Evans, President

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

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

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PROJECT BACKGROUND

The Moynihan Station Civic and Land Use Improvement Project (the “Project”) will transform the James A. Farley Post Office Building (the “Farley Building”) into a majestic inter-city train hall for AMTRAK, thereby expanding the Penn Station facility concourses by one third, increasing vertical circulation to and from the existing platforms, and dramatically upgrading the traveling experience for millions of yearly visitors to New York City and the surrounding region.

Construction on Phase 1 of the Project (“Phase 1”) began in September 2012 and will be completed in August 2016. Phase 1 involves the construction of an expanded, below-grade commuter concourse west of 8<sup>th</sup> Avenue; access points to this concourse through the Farley Building at the corners of 8<sup>th</sup> Avenue and 33<sup>rd</sup> and 31<sup>st</sup>; renovation of an underground passageway between the Farley Building and existing Penn Station; and the reconfiguration of the 8<sup>th</sup> Avenue subway interface to accommodate increased pedestrian flows to and from the newly expanded concourse and the future Moynihan Station train hall.

Skidmore, Owings & Merrill (“SOM”) has been involved with the project since 1998, when the firm was selected through a competitive RFP process and awarded the contract (as subsequently amended, the “Contract”). SOM is the Architect of Record for Phase 1. The construction drawings for Phase 1 are based on Moynihan Station design drawings completed by SOM in 2006. These construction drawings were prepared (“repackaged”) by SOM in 2011 for construction services solicitation at a substantial cost discount to completing entirely new design and construction drawings.

In 2012-13, MSDC, the Port Authority of New York and New Jersey (“PANYNJ”) and AMTRAK reviewed the train hall construction plans and conceptual layout in order to incorporate lessons learned from Phase 1. SOM prepared a revised conceptual train hall plan as part of this review.

In order to move forward with the next phase of the Project—the completion of the inter-city train hall—it is necessary to finalize and repackage construction drawings for competitive construction services solicitations. A comprehensive review by MSDC and the PANYNJ Engineering Department showed that because the 2006 SOM plans for the train hall were advanced to the 80% level and the major elements of the Project remain unchanged, an update and repackaging of the 2006 SOM train hall designs, inclusive of the 2012-13 update of the train hall layout, will provide the public with the most time and cost effective solution for advancing towards construction.

### CONTRACT HISTORY

In 1998, after a competitive bidding process and pursuant to Director authorization, MSDC (then Pennsylvania Station Redevelopment Corporation) entered into the Contract pursuant to which SOM would “provide all architectural, structural, mechanical and electrical engineering services necessary for the programming, design, contract documentation and construction administration of the restoration and redevelopment of a portion of the historic James A. Farley Post Office Building in New York City into an intermodal transportation facility” in an amount not to exceed \$23,000,000. In 1999, the Directors authorized an increase in the total contract amount to \$44,700,000. By 2003, approximately \$34,500,000 had been expended against the Contract, and SOM had performed ably in all aspects of their original scope, including completion of construction documents at the 80% level for the Project iteration current at that time.

With the decision in 2010 to advance the Moynihan Station project in two distinct phases—Phase 1, which is the below-grade critical infrastructure now under construction, and Phase 2, which is the completion of the train hall— and with all previously performed Contract work having been performed, accepted, and paid for in full, the Directors authorized the amendment and restatement of the Contract. The amended and restated Contract terms superseded the previous terms, provided for SOM to repackage drawings for the advancement of Phase 1, and established a new maximum Contract amount of \$5,775,928. This amount was within the previously authorized but unspent amount for the Contract.

Since 2010, the Contract has been amended five times in in order to provide for new insurance requirements for Phase 1, for pedestrian flow modeling work, construction phase advisory services for Phase 1, the re-bid repacking of designs for the 33<sup>rd</sup> Street Connector, and test-fits for the purposes of updating the feasibility study for potential commercial development surrounding the train hall. These amendments plus change orders within the authorized contingency amount increased the Contract’s current maximum value to \$13,774,868.

MSDC staff now seeks authorization to amend the Contract in order that SOM may update the 2006 train hall designs to a level that will be satisfactory for inclusion in the solicitation documents for construction of the train hall.

A Contract Reporter Exemption request was submitted to ESD Legal for this amendment.

SCOPE OF SERVICES

SOM will complete train hall construction documents suitable for bid to the construction trades. The estimated schedule for the completion of such documents, inclusive of review by MSDC, PANYNJ, and the railroads, is twelve months.

SOM will break its work into five distinct categories: (1) Preliminary Design Criteria, (2) Early Action Construction Drawing Packages, (3) 50% Train Hall Schematic Drawings, (4) 75% Train Hall Design Drawings, (5) 100% Train Hall Construction Drawings.

This work is expected to be completed according to the following schedule:

**1) Preliminary Design Criteria**

- a) 1 month from award - 50 percent submission and on board review meeting
- b) 2 months from award - 100 percent submission

**2) Phase II Design – Early Action Items**

- a) Interior Demolition – 12 months from award – 100 percent submission
- b) Abatement – 3 months from award – 100 percent submission
- c) Platform Utilities – 1 month from award – 100 percent submission
- d) Elevator/Escalator Pits – 10 months from award – 100 percent submission
- e) Farley Ring Roof – 7 months from award – 100 percent submission

**3) Phase II Design – Base Package**

- a) 6 months from award - 50 percent on submission and on board review meeting
- b) 9 months from award – 75 percent review submission
- c) 12 months from award - 100 percent review submission (Constituent/Agency Review)
- d) Final Submission – Bid documents (inclusive of Constituent/Agency review & comment incorporation)

The design and preparation of bid documents for both Early Action Items and Base Package scope of work will be concurrent; post award duties for Early Action items shall be completed simultaneously to the Base Package design. At each submission for the Base Package, a peer review will be conducted to review the documents for their compliance with the preliminary design criteria as well as general constructability.

MSDC must authorize each category in writing to SOM before SOM will proceed with the next category of work. MSDC will have the flexibility to halt work, either temporarily or permanently, after the completion of one category and prior to the start of the next, subject to its sole discretion. And MSDC will not be required to advance to the next category of work.

As required to deliver this work, SOM will subcontract with specialty firms, including but not limited to the following, most of whom have previously supplied similar services for, and are familiar with, the

Project. Such subconsultants will be paid for work done, via SOM, based on invoices submitted for time expended. The anticipated list of sub-consultants is as follows:

- Structural Engineering – Severud Associates.
- Building MEP Engineering – Jaros Baum & Bolles Consulting Engineers
- Civil Engineers – Stantec
- Passenger Movement/Train-shed Plumbing – Parsons Brinkerhoff
- Historic Preservation (documentation) – BCA
- Historic Preservation (approvals) – Higgins & Quasebarth
- Acoustical/Public Address – Cerami
- Vertical Transportation – Van Duesen Associates
- Security (approvals) – Ducibella Venter & Santore
- Signage – Pentagonam
- Cost Estimation – VJ Associates
- Environmental Abatement – ATC
- Survey, Civil & Geotechnical – Langan Engineering
- Canopy Special Structural Engineering – SBP
- Station Retail – Jones, Lang, LaSalle
- Lighting Design – DGA
- Code Consulting – CCI
- Systra – Train Shed Systems
- Baggage Handling Consultant – BNP
- Skylight Maintenance – Entek Engineering
- Project Expeditor – TBD

SOM and the proposed subconsultants are qualified to perform the work requested, and prior Project work by such firms has been satisfactory.

#### FEES

SOM's fee proposal for this work is \$11,663,151—inclusive of: (a) its own work; (b) the subconsultant work; (c) SOM supervision and coordination of the subconsultants; and (d) estimated reimbursable expenses; (but not including construction phase advisory services—to be paid on a time-and-materials basis, subject to receipt of invoices showing time actually spent, applicable rates, and expenses incurred).

Staff recommends a 10% contingency of \$1,166,315, thereby increasing the Contract amount by a total of \$12,829,466, for a maximum Contract amount of \$26,604,334.

SOM will submit monthly invoices (inclusive of subconsultant invoices).

SOM has also provided a proposal for construction phase advisory services for the completion of the train hall, however, the Directors are not asked to authorize this amount at this time, as the finalization of the construction budget and construction finance plan is necessary first.

This proposal has been reviewed by PANYNJ Engineering, pursuant to the terms of the Consulting Services Agreement, and PANYNJ recommends advancing design under the terms outlined above.

**SUMMARY**

Based on the foregoing, board approval is requested to amend the SOM contract as follows:

<b>Consultant</b>	<b>Previously Authorized Contract*</b>	<b>Additional Services</b>	<b>Contingency (10%)</b>	<b>Amended Contract Total</b>
<b>SOM</b>	<b>\$13,774,868</b>	<b>\$11,663,151</b>	<b>\$1,166,315</b>	<b>\$26,604,334</b>

*\* Includes previously authorized contingencies.*

**SOURCES OF PAYMENT**

All of the additional work to be performed pursuant to the proposed contract amendment will be funded from the Federal Railroad Administration.

**RESPONSIBLE PARTIES**

Pursuant to State Finance Law Section 139-j and 139-k and ESDC’s policy related thereto, staff has (a) considered the ability of SOM to perform the services provided for in the above-described contracts, 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 SOM to be responsible.

**AFFIRMATIVE ACTION**

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

## ENVIRONMENTAL REVIEW

The requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required with this authorization.

## REQUESTED ACTIONS

In order to preserve the continuity of this valuable Project design and engineering expertise, staff requests that the Contract be further amended substantially in conformance with the terms and conditions set forth in these materials, inclusive of sub-consultant work as described above.

The Directors are requested to:

1. Make a determination of responsibility with respect to SOM; and
2. Authorize the Amendment of the Contract in order to include the update and repackaging of designs for the Moynihan Station train hall and to increase the amount of the Contract.

## RECOMMENDATION

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

## ATTACHMENTS

Resolutions

Exhibit 1 – Schedule of SOM Contract Amendments (2010– 2014)

September 26, 2014

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

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Skidmore Owings & Merrill LLP (“SOM”) to be responsible; and be it further

RESOLVED, that the Directors hereby authorize the amendment of the contract with SOM in the amount of \$11,663,151 plus a 10% contingency of \$1,166,315 for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials, thereby increasing aggregate limit of the contract \$26,604,334; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions.

\* \* \*

# MSDC

## Contract History

### Skidmore, Owings & Merrill

SOM	Description	Amount	Contingency	Total
<b>Base Contract</b>	Phase 1 Design Contract	\$5,755,928.00	\$744,072.00	<b>\$6,500,000.00</b>
<b>Amendment #1</b>	Insurance Modification	\$0.00	\$0.00	<b>\$0.00</b>
<b>Amendment #2</b>	PB Pedestrian Modeling	\$536,430.00	\$80,500.00	<b>\$616,930.00</b>
Change Order #1	Phase 1 Staging Drawings	\$211,884.00	(\$211,884.00)	<b>\$0.00</b>
Change Order #2	Reconfigure Subway Stairs	\$80,000.00	(\$80,000.00)	<b>\$0.00</b>
	Additional Bollards Surveys	\$80,000.00	(\$80,000.00)	<b>\$0.00</b>
	LIRR Waiting Area Alternate	\$200,000.00	(\$200,000.00)	<b>\$0.00</b>
	Repackage Phase 1 Bid Docs	\$200,000.00	(\$200,000.00)	<b>\$0.00</b>
<b>Amendment #3</b>	Construction Phase Services	\$5,225,000.00	\$522,500.00	<b>\$5,747,500.00</b>
<b>Amendment #4</b>	33rd St Connector Repackage	\$185,000.00	\$18,500.00	<b>\$203,500.00</b>
	33rd St Connector CA Services	\$290,000.00	\$29,000.00	<b>\$319,000.00</b>
<b>Amendment #5</b>	Farley Test-fit Study (Phase 3)	\$352,671.00	\$35,267.10	<b>\$387,938.10</b>
Change Order #3	Farley Entry Revision	\$195,761.00	(\$195,761.00)	<b>\$0.00</b>
Change Order #4	Resiliency Initiatives	\$71,691.00	(\$71,691.00)	<b>\$0.00</b>
Change Order #5	PRV Steam Station	\$33,800.00	(\$33,800.00)	<b>\$0.00</b>
<b>CONTRACT TOTAL</b>		<b>\$13,418,165.00</b>	<b>\$356,703.10</b>	<b>\$13,774,868.10</b>

# ITEM 4

FOR CONSIDERATION

September 26, 2014

TO: The Directors

FROM: Michael Evans, President

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

REQUEST FOR: Authorization to Amend a Contract with PB Americas, Inc. for Architectural, Engineering, Design, and Construction Phase Services; Authorization to Take Related Actions

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**BACKGROUND**

Phase 1 of Moynihan Station includes three distinct sub-projects:

1. West End Concourse Expansion
2. Emergency Ventilation System
3. 33<sup>rd</sup> Street Connector

In April 2010, the Directors authorized a contract with PB Americas, Inc. (“PB”) for architectural and engineering services on Phase 1 of the Moynihan Station Project, specifically pertaining to the design of the Emergency Ventilation Sub-project.

In May 2012, the Directors awarded the construction contract for the West End Concourse Expansion Sub-project (“WEC”) to Skanska USA Civil Northeast, Inc. (“Skanska”).

In September 2012, USDOT/FRA awarded a \$30 million grant to advance the 33<sup>rd</sup> Street Connector sub-project and to construct the fan room structures over C-Yard for the Emergency Ventilation System.

In order to advance the structural work in C-Yard, in October 2012 the Directors authorized an amendment to the contract with PB to repackage the Platform Ventilation System plans and specifications so structural work could proceed in C-Yard.

In January 2013, the Directors authorized an amendment to the Skanska contract in order to include the construction of the C-yard fan room structures. Work began in C-Yard in February 2013 and will continue through October 2014. Due to significant construction challenges in C-Yard resulting from fracturing and fissuring of the northern Penn Station retaining wall, a significant redesign of C-Yard was required in summer of 2013 in the middle of construction.

This delayed the completion of work in C-Yard and resulted in change orders in substantial amounts.

With work in C-Yard now complete, it is the recommendation of the PANYNJ Engineering Department that PB review the structural plans for the fan room structures in E-yard in advance of MSDC initiating this work, in order to improve the design and reduce the likelihood for significant change orders and delays during the course of construction. Subject to available funding, MSDC anticipates advancing this structural work in the latter half of 2015. As the design review and revisions for these plans will take some months, the Directors are recommended to authorize the initiation of this work now. The design revisions will also inform cost estimates for the E-yard fan room structures, leading to more reliable budgeting for this element of work.

Therefore, approval is sought for the following actions:

- 1) Amend PB contract to re-package the Platform Ventilation System plans and specifications so the necessary structural work can proceed in E-Yard of the train shed and to provide necessary construction phase services during construction as the Engineer of Record.

A Contract Reporter Exemption request was submitted to ESD Legal for this amendment.

**PROPOSED CONTRACT AMENDMENT**

The review and redesign of the fan room structures in E-Yard is budgeted at \$144,458, based on a proposal from PB. The proposal has been reviewed and recommended by PANYNJ Engineering, per the terms of the consulting services agreement between PANYNJ and MSDC.

Staff recommends a 10% contingency of \$14,445.

MSDC, therefore, requests authorization to amend the PB contract by a total of \$158,903, for a new total contract amount not to exceed \$3,756,403, inclusive of contingency.

**SUMMARY**

Based on the foregoing, board approval is requested to amend the contracts PB as follows:

<b>Consultant</b>	<b>Previously Authorized Contract*</b>	<b>Additional Services</b>	<b>Contingency (10%)</b>	<b>Amended Contract Total</b>
<b>PB</b>	<b>\$3,597,500</b>	<b>\$144,458</b>	<b>\$14,445</b>	<b>\$3,756,403</b>

\* Includes previously authorized contingencies.

## **FUNDING**

The amendments to these contracts and the associated professional liability insurance policy will be funded from the Phase 1 budget with 100% funding from the Federal Railroad Administration ("FRA") grant. Funds will be drawn from existing accounts and all advances will be reimbursed promptly.

## **RESPONSIBLE PARTIES**

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

## **AFFIRMATIVE ACTION**

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

## **ENVIRONMENTAL REVIEW**

The requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required with this authorization.

## **REQUESTED ACTIONS**

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

## **RECOMMENDATION**

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

**ATTACHMENTS**

Resolution

September 26, 2014

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contracts for Architectural, Engineering, Design, and Construction Phase Services with PB Americas, Inc.; and Authorization to Take Related Actions

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BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds PB Americas, Inc. (“PB”) 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 PB and increase the amount of such contract by \$158,903, to a new aggregate limit of \$3,756,403, for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions.

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