MOYNIHAN STATION DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

FRIDAY

FEBRUARY 3, 2012

10:30 a.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 Corporation
633 Third Avenue – 37th Floor
New York, New York 10017

Friday

February 3, 2012 – 10:30 a.m.

REVISED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the October 28, 2011 Directors' Meeting

EXECUTIVE SESSION

2. Discussion of Construction Contracts (Oral Report)

FOR CONSIDERATION - (Tentative; Pending Executive Session)

3. Authorization of Actions Regarding Procurement of Construction Work

FOR INFORMATION

4. President's Report (Oral Report)

MOYNIHAN STATION DEVELOPMENT CORPORATION
Meeting of the Directors
Held at the Offices of the
Empire State Development Corporation
633 Third Avenue
37th Floor Conference Room
New York, New York 10017

October 28, 2011

MINUTES

In Attendance

Directors:
John D. Porcari, Chairman (via video conference)
Timothy J. Gilchrist
Karen Hedlund (Designee for Karen Rae)
Tokumbo Shobowale
Paul Williams

Present for the Empire State Development Corporation:
Thomas Brennan, Senior Vice President
Helen Daniels, Director – Affirmative Action
Peter Davidson, Executive Director
Richard Dorado, Senior Counsel
Natasha Pallan, Director – Subsidiary Finance
Shelia Robinson, Deputy to the CFO
Renzo Sosa, Manager – Procurement & Admin. Services
Frances Walton, Chief Financial & Administrative Officer

Present for the Moynihan Station Development Corporation:
Fred Bartoli, Project Manager
Michael Evans, Vice President
Bronson Fox, Vice President – Development
Rebecca Pellegrini, Project Manager
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Also Attending:
Joe Peraino, USDOT (via video conference)
Amy Tovar, USDOT, General Counsel's office (via video conference)
Polly Trottenberg, FRA, Ass't Secretary for Transportation Policy (via video conference)
Vincent White, USDOT, Deputy Secretary's office (via video conference)

Also Attending: Andrew Lynn, PANY&NJ
Angel Martinez, PANY&NJ
Alfred Fazio, Amtrak
Kenneth Hanson, Amtrak
Anthony Caracchiolo, STV

The meeting of the Moynihan Station Development Corporation ("MSDC" or the "Corporation") was called to order at approximately 3:04 p.m. by Chairman John Porcari. It was noted for the record that the meeting was being web cast and that the Directors had received relevant written materials in advance of the meeting. Also noted for the record was the Corporation's policy to welcome public comment on the items on the current Agenda. The Chairman briefly reviewed the protocol for comments.

The first order of business was approval of the Minutes of the September 29, 2011 Directors' meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

145. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE SEPTEMBER 29, 2011 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on September 29, 2011, 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.

* * *

Richard Dorado presented the next Agenda item, requesting authorization for the Corporation to enter into a contract for legal services with the law firm of Kramer, Levin, Naftalis & Frankel.

In his presentation Mr. Dorado explained to the Directors that ESD prequalified law firms, with expertise in real estate, land use and related litigation and that, from the prequalified list of law firms MSDC staff and ESD counsel selected the following firms who expressed an interest in Project: Carter, Ledyard and Milburn, LLP ("Carter Ledyard"), Shearman and Sterling ("Shearman") , Kramer, Levin, Naftalis, Frankel, LLP ("Kramer Levin") and Skadden Arps, Slate, Meagher and Flom LLP ("Skadden Arps"). Mr. Dorado indicated that, of the four firms selected, three firms responded: Shearman, Kramer Levin and Skadden Arps. He recommended that MSDC staff recommend, and the board approved, the selection of Skadden Arps at MSDC's September 29, Directors' meeting but that the firm later informed the staff that it could not undertake the entire scope of the work at ESD's standard rates and must withdraw from consideration.

The board was informed that MSDC staff now recommends the retention of Kramer Levin. Mr. Dorado explained that Kramer Levin has extensive experience and expertise in complex real estate and governmental transactions; and that the firm has accepted ESD's standard rates for legal services. He stated that partners, Jay Neveloff and James Godman will be the lead attorneys on the project and that they have experience in working with complex and large-scale commercial condominium plans, mixed-use and long-term triple net lease

transactions and other private issues with the zoning overrides and PILOT payments. Mr. Dorado further explained that the firm's associates and other staff will be used by the partners as appropriate.

Mr. Dorado further explained that the total cost of this contact shall not exceed $750,000, an amount that was determined by staff to cover the negotiation of the necessary agreements regarding the Farley Redevelopment transaction with the designated developer, Amtrak and the Postal Service.

Mr. Dorado stated that pursuant to State Finance Law 139-j and 139-k, in addition to ESD's policy related thereto, consideration has been given to Kramer Levin's ability to perform services for the proposed contract. He informed the Directors that staff had consulted with the list of offerors determined to be non-responsible bidders and debarred offerors maintain by the New York State Office of General Services and, based on the forgoing, determined Kramer Levin to be responsible.

Karen Hedlund, designee for Karen Rae, asked Mr. Dorado if Kramer Levin confirmed that they had no conflicts of interest and if a conflict of interest were to arise in the future, how it would be handled. Mr. Dorado responded that Kramer Levin confirmed they have no conflicts and that although the firm has done work for one of the joint venture partners in the past, the firm is not currently doing any such work. Should such a situation arise in the future, Mr. Dorado explained that a wavier would be sought.

Paul Williams asked that the Corporation consider including a provision in the retainer agreement with Kramer Levin requesting that they use reasonable efforts to use certified MWBE firms for outside consulting services. Mr. Dorado stated that an appropriate provision would be included in the contract.

Tokumbo Shobowale asked if it had been confirmed that Kramer Levin would accept our legal services rates. Mr. Dorado responded that staff had confirmed Kramer Levin's acceptance of ESD's legal services rates.

Chairman Porcari requested that Mr. Dorado give additional information and details on the firm's relevant experience. Mr. Dorado responded that Kramer Levin previously worked on the Time Warner project at Columbus Circle which included a large commercial condominium. He stated that this project is similar to MSDC's in that it also included multiple uses similar the proposed Farley Building development, excluding the train hall.

Michael Evans added that Jay Neveloff, the lead partner for Kramer Levin, is a well-regarded real estate lawyer in New York City with 25 years of experience working with the Trump organization on real estate matters. Mr. Neveloff has also been involved with the Starrett City Housing Project reorganization. Mr. Evans stated that his colleagues in the Governor's office who participated in the meetings regarding that reorganization regarded him as a very effective lawyer.

In addition, Mr. Evans noted that Kramer Levin is well known for its land use practice and that, although the firm would not necessarily be used for land use efforts at this time, it could certainly bring that experience and knowledge to the work negotiating terms with the joint venture or USPS.

There being no further comments or questions from the Directors, a motion was duly made and seconded and the following resolution was unanimously adopted:

146. MOYNIHAN STATION DEVELOPMENT CORPORATION – New York (New York County) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Enter into a Contract with Kramer, Levin, Naftalis & Frankel, LLP for Legal Services and 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 Kramer, Levin, Naftalis & Frankel, 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 Kramer, Levin, Naftalis & Frankel, LLP for legal services, the cost of which is not to exceed Seven Hundred and Fifty Thousand Dollars ($750,000) 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 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.

* * *

Chairman Porcari asked Tim Gilchrist to present his President's Report. In his report Mr. Gilchrist made note of Governor Cuomo's appointment of Patrick Foye as Executive Director of the Port Authority of New York and New Jersey and the Governor's announcement of the consolidation of operational control of MSDC into the Port Authority. Mr. Gilchrist explained that in discussions with Pat Foye it was made clear that these changes are an opportunity to move the Project forward faster and will not slow down the Project.

Mr. Gilchrist stated that the board's previous approval of the agreement between MSDC and the Port Authority, which outlines the Port Authority's role in both Phase 1 and Phase 2 of the Project, resulted in the Port Authority's providing oversight of the design phase and provides for its oversight of the construction phase as well. He explained that ESD's role has been to provide counsel through in-house and by outside counsel and that ESD's Finance Dept. has been processing MSDC's bills. Mr. Gilchrist indicated that, as the Project moves forward with Phase 1, MSDC plans to take immediate steps to streamline the payment and reimbursement process as well as insure all internal controls are in place going forward, particularly with respect to the TIGER Grant and other federal funding.

Mr. Gilchrist indicated that, although the final transfer of operational control to the Port Authority would be fleshed out once Mr. Foye took his position as Executive Director, Mr. Gilchrist reassured the Directors that the consolidation would not adversely impact progress with the Phase 1 Construction Project.

In that regard, the Board was informed that, following the last MSDC Directors' meeting on 9/29/11, plans had been sent to seven bidders, and earlier during the week a MWBE Job Fair was held. Helen Daniels, Director, ESD Affirmation Action, reported that several announcements were sent by email blast to all certified MWBEs that meet the requirements to work on the Project. She disclosed that, forty-seven MWBEs attended the Fair and spent approximately two hours with the seven (7) bidders discussing the opportunities available to the MWBEs. Ms. Daniels recounted that she and MSDC staff conducted a brief presentation on the Project to insure that all understood what the Project is about as well as the guidelines and expectations for MWBEs involvement with respect to the Project.

Ms. Daniels stated that she has received a number of questions and concerns, some of which have been received by email and some of those inquiries have been forwarded to MSDC staff for response, specifically those questions relating to construction. She stated that the Job Fair was a success and additional events of this type will be scheduled in the future. Ms. Daniels explained that these events will help assure that the required MWBE and disadvantaged business goals set by the Governor and the federal government are met on the Moynihan Station Project.

Following Ms. Daniels' report, Mr. Gilchrist introduce Alfred Fazio, Deputy Chief Engineer at Amtrak. Mr. Fazio discussed briefly what his responsibilities will encompass. Mr. Fazio explained that his role is to integrate all of Amtrak projects in the New York metropolitan area which include re-building infrastructure as well as the high speed rail program as a

component in Penn Station and major work between New Brunswick and Trenton. Mr. Gilchrist stated that the Port Authority, Amtrak and MSDC staff had met to discuss resolutions to the Long Island Railroad outage issues and coordination of all the projects that will assist in the construction phase. Chairman Porcari expressed the Board's appreciation of Mr. Fazio's help and he acknowledged the complexity of coordination for the Long Island Railroad outages.

Mr. Gilchrist explained that MSDC is finalizing the Amtrak agreement and inputting the last details on the Work Force Account Agreement. He reminded the Directors of the outstanding issue regarding program management. He stated that an agreement has been established not to duplicate efforts in overseeing everything among the principals between Amtrak, Long Island Railroad and MSDC and that the Port Authority has developed a management plan for the various roles which should resolve all issues.

Mr. Gilchrist then asked Angel Martinez to give a report on the Phase 1 progress. Mr. Martinez reported that the project is currently in the middle of a bid phase. He explained that three (3) addendas have been issued to date to answer requests for information. He stated that 225 requests for information have been received on 1,200 drawings that have been produced for the Project. He indicated that the staff is encouraged by the requests for information since they have received requests from each of the seven (7) pre-qualified firms. He explained that there have been no major redesigns, mostly clarifications; and that preparations are being made for the construction phase, which would include establishing a Steering Committee comprised of the key stakeholders/decision makers. This Committee, he

explained would work to resolve issues of scope schedule and budget in a timely manner.

Mr. Martinez stated that the Construction Manager is being briefed on the Project. He introduced the Project Executor from Tri Venture, STV, Anthony Caracchiolo.

Mr. Martinez then discussed the next steps on the Project. He mentioned among other things, that the ET design is being finalized; Alfred Fazio will assist in getting the necessary tension readings completed at Penn Station; estimates which include all work completed to date are being finalized. He indicated that bids are due on 12/6/11 and determination of a back-up date is needed which depends on whether there is resolution on some items that remain outstanding. Mr. Martinez explained that, a bid analysis will be performed to make an award recommendation sometime in January.

Following Mr. Martinez's report, Mr. Shobowale asked Mr. Martinez if there are things of concern to him regarding the Project. Mr. Martinez responded that he is most concerned with the track outage work and having enough time to complete the work within the allotted time. Mr. Shobowale asked how the track outages are handled and what are the critical factors that allow for the outages? Mr. Martinez responded that the key is that the contract has liquidated damages on completion of the outage work which allows them to keep track of milestone dates as well as track productivity.

Following the President's Report Chairman Porcari called for a motion to conduct an Executive Session pursuant to paragraph (f) of Subdivision 1 Section 105 of the New York State Open Meetings Law. Upon motion duly made and seconded, the following resolution was unanimously adopted:

147. EXECUTIVE SESSION – Pursuant to Paragraph (f) of the Subdivision 1 Section 105 of the New York State Open Meetings Law

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

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All persons were requested to leave the room with the exception of the Directors and members of senior staff.

The Executive Session ended at 4:00 p.m., Chairman Porcari noted for the record that no votes were taken during Executive Session.

There being no additional business, the meeting was adjourned at approximately 4:02 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

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Moynihan Station Development Corporation

FOR CONSIDERATOIN
February 3, 2012

TO:	The Directors
FROM:	Tim Gilchrist
SUBJECT:	NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project (the "Project") – Phase 1 Construction
REQUEST FOR:	Authorization to Reject All Bids of Construction Contractors for Construction of Phase 1 of the Project; Authorization to Rebid Construction Work for Phase 1 of the Project; and Authorization to Take Related Actions

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BACKGROUND

On January 12, 2012, the following contractors bid for Phase 1 of the Moynihan Station Project:

- Granite Construction Northeast, Inc.
- Judlau Contracting, Inc.
- Kiewit Infrastructure Co.
- S & P Joint Venture (Shiavone and Picone)
- Skanska USA Civil Northeast, Inc.
- Tutor Perini Civil Group
- Yonkers Moynihan JV (Yonkers with F.W. Sims).

Bids were received for three alternatives:

- The West End Concourse, Platform Ventilation System and 33rd Street Corridor improvements including an additional waiting area on north end the West End Concourse (Packages 1-4 including Alternate);
- The entire project without the additional waiting area; (Packages 1-4 without alternate); and
- The West End Concourse and the Platform Ventilation System (Packages 1-3).

Tutor- Perini was the low bidder on all options. The results are summarized as follows:

Contractor	Package 1-4 including alternate	Packages 1-4 without alternate	Packages 1-3
Granite	$318,000,000	$316,729,000	$303,734,000
Judlau	$313,700,000	$303,700,000	$272,000*
Kiewitt Infrastructure	$302,925,000	$299,995,000	$283,645,000
Moynihan S&P JV	$289,821,130.54	$285,482,000	$273,812,913
Tutor Perini	$262,460,000	$260,930,000	$251,120,000
Yonkers Moynihan JV	$264,351,000	$262,751,000	$252,351,000

*Assumed error.

Subsequent to the receipt of bids, the Port Authority of New York and New Jersey and the STA JV, our construction manager, undertook an analysis of the bid and the Tutor-Perini work plan and other submittals. In addition, the work plan was reviewed by Long Island Railroad and Amtrak. A low bid interview was conducted on January 13, 2012, and follow up questions were sent to, and responses received from Tutor-Perini.

In summary, the bid by Tutor-Perini is the lowest responsible bid received for all packages, and its work plan is sound and the bid was balanced.

However, the bid exceeds the available funding for the Phase 1 construction project.

The documents that composed the bid solicitation do not provide MSDC the flexibility to award the contract in any combination of packages other than as outlined in the above.

It is recommended that the bids all be rejected and that the project be rebid by the prequalified bidders as part of the ongoing procurement.

RESPONSIBLE PARTIES & AFFIRMATIVE ACTION REVIEW

In that there is no request for authorization to enter into a contract no findings are required.

ENVIRONMENTAL REVIEW

The activities covered in this request for authorization have been addressed in prior environmental reviews conducted by MSDC and ESD, and therefore, no further environmental review is required in connection with this request.

REQUESTED ACTIONS

The Directors are requested to authorize the Corporation to reject all bids and rebid the construction work for Phase 1 of the Project and take all related actions.

RECOMMENDATION

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

ATTACHMENTS

Resolution

February 3, 2012

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project (the "Project") – Phase 1 Construction – Authorization to Reject All Bids of Construction Contractors for Construction of Phase 1 of the Project; Authorization to Rebid Construction work for Phase 1 of the Project; and Authorization to Take Related Actions

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BE IT RESOLVED, that based on the materials presented at this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds that the lowest responsible bid cannot be funded within available resources and all bids, as described in the Materials, for construction of Phase 1 ("Phase 1") of the Project are rejected;

RESOLVED, that the Corporation shall take whatever actions that the President, or other Officer of the Corporation, or his or her designee(s), deem necessary or appropriate in order to reject all of the bids and to rebid all or any portion of the construction work for Phase 1 as described in the Materials;

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 Resolution.

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