

MOYNIHAN STATION DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

WEDNESDAY

MAY 9, 2012

1:00 p.m.

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 19, 2012

MINUTES

In Attendance

Directors:

John D. Porcari, Chairman (via video conference)
Timothy J. Gilchrist
Karen Hedlund (via video conference)
Anita Romero
Tokumbo Shobowale
Paul Williams (via telephone)

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

Thomas Brennan, Senior Vice President
Helen Daniels, Director – Affirmative Action
Richard Dorado, Senior Counsel
Abigail Leib, Public Affairs Associate
Kathleen Mize, Deputy CFO and Controller
Carlos Otero, Vice President - Contracts Admin.
& Subsidiary Finance
Natasha Pallan, Director – Subsidiary Finance
Shelia Robinson, Deputy to the CFO
Sankar Singh, Manager – Contract Audit & Admin.
Renzo Sosa, Manager – Procurement & Admin. Services

**Present for the
Moynihan Station
Development Corporation:**

Fred Bartoli, Project Manager
Michael Evans, Vice President
Bronson Fox, Vice President – Development
Rebecca Pellegrini, Project Manager
Mehul Petal, Vice President - Development
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Also Attending:

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

Also Attending: Steve Illich, FRA/DOT
Andrew Lynn, PANY&NJ
Angel Martinez, PANY&NJ
Kenneth Hanson, Amtrak

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order at approximately 1:01 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 February 3, 2012 Directors’ meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

151. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE FEBRUARY 3, 2012 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on February 3, 2012, 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.

* * *

Mr. Gilchrist presented the next Agenda item, requesting approval of the Corporation’s operating and capital budgets for fiscal year 2012-2013.

Mr. Gilchrist informed the Directors that New York State law requires the Corporation's Directors' approval of its operating and capital budgets by the end of the preceding fiscal year.

He explained that the Corporation is requesting approval of three budgets: (1) the operating budget which covers MSDC's staff and non-personal services costs, (2) MSDC budget covering the expected cash flow expenses for Phase 1, and (3) the Farley Building covering the operating costs for the Farley Building and Phase 2 Project.

Mr. Gilchrist explained that there is a reduction in the operating budget from the previous year which reflects a savings in the non-personal services as a result of MSDC staff moving to the Farley Building. The Moynihan Station budget reflects cash spending in 2012-2013 on Phase 1. Mr. Gilchrist stated that expense items included previously approved contracts for the construction manager, STAJV, Port Authority staff and funding from consultants SOM, SYSTRA and PB. Other expense items include legal costs, payment to contractors as well as, expenses for Amtrak Force Account work. Mr. Gilchrist noted that a reserve for general liability insurance was also included.

Mr. Gilchrist explained that the funding for Phase 1 is from grants previously approved and which are primarily funded through the Tiger Grant, other appropriated grants and CMAC funding with matched grants provided through grants from the MTA and the Port Authority. He stated that the Farley budget consists of two categories, the first being the cost of operating the Farley Building pursuant to a contract with the Office of General Services. The

second category is the funding to progress the assessment, appraisal and legal services that are anticipated to be incurred during the negotiations with the joint venture on the Farley Building and related air rights; and working on the disposition of the remainder of the air rights with New York City Planning. Mr. Gilchrist explained that the funding for all three budgets will come from the Farley operating funds.

Following Mr. Gilchrist's presentation Anita Romero asked Mr. Gilchrist to clarify and confirm that the funding agreement in place with respect to the various budgets will not require an amendment in order to satisfy the budgets that require the Directors' approval. Mr. Gilchrist responded affirmatively. He stated that all funding is in place and amendments are not required in order to support the budget.

Chairman Porcari asked with regards to the capital budget, if at some point the Corporation's source and use chart would be updated to reflect the two additional sources from Amtrak and the MTA. Mr. Gilchrist responded affirmatively.

Following questions and comments by the Directors a motion was duly made and seconded and the following resolution was unanimously adopted:

152. NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Approval of MSDC Operating and Capital Budgets for FY 2012-13

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 - FY 2012-2013 Operating Budget, the Moynihan Station Development Corporation - FY 2012-2013 Capital Project Budget (collectively the “Corporation’s Budget”), and the Farley Building FY 2012-2013 Capital Budget substantially in the form set forth in the materials; and be it further

RESOLVED, that the President of the Corporation or his designees be, and each of them hereby is, authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Corporation’s Budget; and be it further

RESOLVED, that the President of the Corporation or his designees be, and each of them hereby is, authorized and directed to execute and deliver all documents and to take all related actions as each of them deems necessary or appropriate to effectuate the forgoing resolutions.

* * *

Chairman Porcari asked Tim Gilchrist to proceed with the next Agenda item, requesting authorization for the Corporation to place insurance policies for the James A. Farley Post Office Building and Annex.

Mr. Gilchrist explained to the Directors that the insurance policies that the Corporation is requesting authorization to place for the Farley Building represents an increase of 3.5 percent over the previous year. Mr. Gilchrist stated that ESD’s insurance broker, Cool Insurance, requested quotations from our existing insurance carriers as well as 14 additional insurance carriers and brokers. The best quotes were provided by Pacific Indemnity Corporation for commercial and general liability, Federal Insurance Company for excessive

liability, One Beacon Insurance for real property insurance and Traveler’s Excess and Surplus Company for excessive real property insurance. Mr. Gilchrist informed the Directors that there are no New York State Certified MWBE insurance carriers; therefore the goal for this particular contract is zero. However, he stated, that as part of ESD’s contract with Cool Insurance there are opportunities for MWBE firms to participated in the current 15 percent participation rate which ESD continues to encourage and work with Cool to increase that rate.

Following a full presentation of the item by Mr. Gilchrist, upon motion duly made and seconded the following resolution was unanimously adopted:

153. New York (New York County) - Moynihan Station Civic and Land Use Improvement Project - Insurance for the James A. Farley Post Office Building and Annex - Authorization to Place Insurance Policies with One Beacon Insurance Company, Pacific Indemnity Company (Chubb Group), Federal Insurance Company (Chubb Group) and Travelers Excess & Surplus Lines Company (Travelers Group); 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. to be responsible; and be it further

RESOLVED that, in accordance with the Materials, 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 Pacific Indemnity Company (Chubb Group) , Federal Insurance Co. (Chubb Group), One Beacon Insurance and Travelers Excess & Surplus Lines Company (Travelers Group); and be it further

RESOLVED that the total annual cost of such insurance shall not exceed \$749,434 and be it further

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

* * *

Next, Chairman Porcari requested that Mr. Gilchrist present his President's Report. In his report, Mr. Gilchrist provided the Directors with the status of the developments that have taken place since the previous Directors' meeting. He informed the Directors that Phase 1 of the Project has been re-staged into three sub-projects which consist of: (1) the West End Concourse and the Farley Building entrances at 8th Avenue, 31st Street and 33rd Street, (2) the Platform Ventilation System, and (3) connection corridors and related subway improvements. Mr. Gilchrist stated that the contract documents for the West End Concourse and Farley Building entrances are currently out to bid.

Mr. Gilchrist indicated that as a result of a meeting held the previous month with FRA, Amtrak, Port Authority, MTA Long Island Railroad and the New Jersey Transit, a plan has been developed to increase outages and workspace in the train-shed for the West End Concourse work.

Mr. Gilchrist stated that a pre-bid conference was held in March to express to the contractors, what MSDC has done to advance the contract forward, as well as, provide the contractors with the assurance of everyone's support for the Project including the cooperation of the involved agencies, and introduction of the teams that will work on the Project.

Mr. Gilchrist stated that the contractors have requested an extension on the April 6 bid due date. Mr. Gilchrist recommended to the Directors that the date be extended to April 26 which will still provide enough time for the required approval so that the work can start this summer and still be able to adhere to the completion dated anticipated in September 2016.

Tokumbo Showbowale asked what would be compressed that would allow the completion date to remain unchanged if the bid due date is extended to April 26. Mr. Gilchrist responded that the Corporation's approval process would be compressed. He stated that a Directors meeting would be scheduled a week or so following the bid opening. The team would work with the contractor to issue their required documents (i.e. bonding documents and insurance), as well as the required internal approvals necessary to give the contractor a Notice to Proceed. In addition, the contractor will probably have to accelerate some of the early work to make sure materials are available when they start construction.

There being no additional business, the meeting was adjourned at approximately 1:23 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

FOR CONSIDERATION

May 9, 2012

TO: The Directors

FROM: Tim Gilchrist

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

REQUEST FOR: Authorization to Award the Construction Contract for the West End Concourse Expansion to Skanska USA Civil Northeast Inc (“Skanska Civil”)

BACKGROUND

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

Phase 1 will build new entrances through the northeast and southeast corners of the Farley Building, double the width and length of the West End Concourse, upgrade the 33rd Street Connector between Penn Station and the West End Concourse, provide new "vertical access elements" (escalators, elevators, stairs) to the platforms, install an emergency platform ventilation system and complete other infrastructure upgrades. This project is a pre-requisite to the opening of Phase 2, which will build a new Amtrak Station in the Farley Building moving Amtrak operations from Penn Station.

Seven contractors were pre-qualified for Phase 1 on August 15, 2011, and bid packages were made available on September 30, 2011. All seven contractors submitted bids to MSDC on January 12, 2012. All bids were significantly above the engineer’s estimate for the Phase 1 work. As a result, the MSDC Board of Directors formally rejected all bids on February 3, 2012, since they exceeded the available funding for Phase I.

After reviewing various options with the project stakeholders, it became apparent that it would be necessary to stage the implementation of Phase 1 in order to utilize the currently available funding. While initially bid as one project, Phase 1 consists of three sub-projects, which can be separately bid and awarded:

- West End Concourse Expansion and related Railroad work including an alternate for creating a new waiting area;
- Platform Ventilation System;
- 33rd Street Connector and Subway work.

This staged implementation approach has the concurrence of USDOT, FRA, Amtrak, MTA, LIRR, NJ Transit and the Fire Department of New York.

It is the intention of MSDC to complete all of the sub-projects that are part of Phase 1 and to stage them so that they are all completed within a four (4) year timeframe.

Stage 1: West End Concourse Expansion. This sub-project takes the longest to complete, is the most complex and provides the most service and access improvements to the public. The scope of the West End Concourse Expansion complies with NFPA 130 and provides a number of important access, egress and life safety benefits to passengers of Penn Station and the future Moynihan Station.

Stage 2: Platform Ventilation System. This sub-project has a shorter duration time than the West End Concourse Expansion. The project can be built with minimal impact on the railroads by using extended outages in 'C' and 'E' yards. With the design complete, this project can be started as soon as funding becomes available.

Stage 3: 33rd Street Connector and Subway Work. Passenger circulation simulations have shown that the capacity provided by this project is not necessary until the completion of Phase 2 of the Moynihan Project (completion of the new Amtrak train hall) and deferring it will have no near-term impacts. This project also has the shortest construction duration. And because of the size of the contract and scope of work, it is anticipated that there is a wider pool of qualified bidders for this work than for the other Phase 1 improvements.

On February 17, 2012 MSDC, Amtrak, MTA, LIRR and New Jersey Transit agreed to improvements in construction terms for the contractor. On March 1, 2012, the pre-qualified bidders were issued revised construction drawings for the West End Concourse Expansion and informed of the improved construction terms in a pre-bid conference. On March 7, 2012, bidders were issued the revised construction contract and staging plan for the West End Concourse Expansion. All of these documents were reviewed and approved in advance by USDOT/FRA, Amtrak and LIRR. Bidders were requested to submit lump sum prices for two options: (1) the West End Concourse including the new waiting area, and (2) the alternate of the West End Concourse without the new waiting area. The alternate option would only be exercised if the bids were in excess of the engineer's estimate and there was insufficient funding for the new waiting area.

On April 26th bids were received from three firms: Yonkers Moynihan JV; Tudor Perini Corporation; and Skanska USA Civil Northeast. Granite Construction Northeast; Judlau Contracting, Inc; Kiewit Infrastructure Co.; and Moynihan S&P Joint Venture all advised that they would not submit a second bid.

The following lump sum bids were submitted for the West End Concourse with the expanded waiting area:

Skanska USA Civil Northeast	\$147,750,000
Tutor Perini	\$157,457,000
Yonkers Moynihan JV	\$157,411,000

The engineers estimate for the project was \$162,627,328, and therefore the deduct alternate did not need to be considered.

Low bid interviews were held with Skanska Civil on May 2nd and May 4th to review the Skanska Civil work plan, staffing and bid breakdown. Skanska was requested to provide a project manager with more experience, and Skanska has committed to assigning a new project manager.

The bid packages were further evaluated by the Port Authority and the Railroads to determine if the work plans are feasible. And the Phase 1 Construction Steering Committee met on April 27th to consider the bids and preliminary analysis.

In addition, the D/M/WBE participation plan was reviewed by ESD/MSDC, and Port Authority staff undertook a responsibility review. Skanska Civil identified D/M/WBE subcontractors totaling 15% of the construction cost of the project (excluding insurance). MSDC sent a letter on May 1, 2012 requesting Skanska Civil provide additional information on how they intend to comply with the 20% goal. A meeting was held with Skanska Civil on May 2nd to review their planned compliance, and Skanska subsequently submitted a plan in writing to demonstrate their plan for compliance.

With the satisfactory completion of the bid review described above and a bid that is within the available funding for the project, MSDC staff recommends that the West End Concourse Expansion work including the Alternate be awarded, in the amount of \$ 147,750,000 to Skanska USA Civil Northeast Inc. ("Skanska Civil").

FUNDING

Funding for this construction contract will come from a combination of federal, MTA and Port Authority grants. Included in these funds is the \$83,000,000 TIGER grant that MSDC received from USDOT. All the funds from this grant will be used for this construction contract. The confirmed sources of funding for the Phase 1 project and the West End Concourse Expansion are detailed below.

Available Funding

Grant	Amount
TIGER	\$83,000,000
TEA-21	\$10,292,623
Appropriations – FY01, FY02, FY03	\$59,826,775
SAFETEA-LU	\$14,061,390
FHWA	\$1,246,067
CMAQ	\$65,000,000
MTA	\$33,500,000
Port Authority of NYNJ	\$10,000,000
Life Safety	\$12,000,000
Amtrak	\$6,000,000
Total Funding	\$294,926,855

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 Skanska Civil 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 Skanska Civil to be responsible.

AFFIRMATIVE ACTION

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

ENVIRONMENTAL REVIEW

The Moynihan Station Development Project was the subject of an environmental review performed by ESDC as the lead agency. A Final Environmental Impact Statement ("FEIS) was prepared pursuant to the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. SEQRA Findings were adopted by ESDC Directors on August 14, 2006. In addition, the ESDC Directors made a Determination that No Supplemental Environmental Impact Statement is warranted based on the results of a Technical Memorandum prepared in support of the project changes represented in the 2010 Amended General Project Plan that was affirmed on June 24, 2010. The activities in this request for authorization have been addressed in the FEIS, the SEQRA Findings, and the Technical Memorandum, and therefore, no further environmental review is required in connection with this request.

REQUESTED ACTIONS

The Directors are requested to authorize the Corporation to award the construction contract in for the West End Concourse Expansion in the amount of \$147,750,000 with a 10% contingency of \$14,775,000 for a total amount of \$162,525,000 to Skanska USA Civil Northeast Inc., as set forth in these materials.

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 submitted its Letter of Recommendation to Award to MSDC.

ATTACHMENTS

Resolution

Letter of Recommendation to Award – Port Authority of New York and New Jersey

Attachment A for Recommendation to Award – Port Authority of New York and New Jersey

Attachment B for Recommendation to Award – Port Authority of New York and New Jersey

May 9, 2012

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Award the Construction Contract for the West End Concourse Expansion to Skanska USA Civil Northeast up to the amount of \$147,750,000 and a 10% contingency (totaling \$162,525,000) 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 Corporation is hereby authorized to enter into a contract up to the amount of \$147,750,000 and a 10% contingency (totaling \$162,525,000) with Skanska USA Civil Northeast Inc. for the construction of the West End Concourse Expansion 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.

* * *

MEMORANDUM

Engineering Department

To: Timothy Gilchrist, President, Moynihan Station Development Corporation
Andrew Lynn, Director, Planning & Regional Development

From: Angel Martinez, RA, PP
Program Director
Moynihan Station

Date: May 9, 2012

Subject: **MOYNIHAN STATION – PHASE 1: WEST END CONCOURSE
RECOMMENDATION TO AWARD CONSTRUCTION CONTRACT**

The Port Authority recommends award of a contract for Phase 1: West End Concourse, of the Moynihan Station Redevelopment to Skanska USA Civil Northeast, the lowest responsive bidder in the amount of \$147,750,000. It is the opinion of the Port Authority that their bid submission conforms to the requirements outlined in the bid advertisement.

Seven contractors were pre-qualified on August 15, 2011 and a solicitation for bid was advertised on September 30, 2011. Bids were accepted by MSDC on January 12, 2012 and reviewed for responsiveness. All seven contractors submitted a bid package. All bids were significantly above the engineer's estimate. On February 3, 2012, the MSDC board of directors formally rejected all bids due to exceeding the available funding for Phase I.

Phase I was initially bid as one project, but consists of three sub-projects, which can be separately bid and awarded:

1. West End Concourse (WEC) and related RR work with an alternate that included a north end waiting area;
2. Platform Ventilation System; and
3. 33rd Street Connector and Subway work.

Due to the current available funding, it was necessary to stage the implementation of Phase I. This approach has the concurrence of USDOT, FRA, Amtrak, MTA, LIRR, NJ Transit, and the FDNY.

It is the intention of Moynihan Station Development Corporation to complete all of the sub-projects that are part of Phase I and to stage them so that their completion is within the 2016 timeframe, as originally scheduled.

Immediately following the February 3, 2012 MSDC Board Meeting, which formally rejected the initial Moynihan Station Phase I bids, the seven prequalified bidders were contacted. They were informed that all efforts were being made to cut scope and obtain agreements from the railroads to lower the cost of the Phase I work in order to rebid the work as soon as possible. On February 17, a Memorandum of Understanding was signed between MSDC and the presidents of the railroads outlining the new staging approach to the project and improved working conditions and construction terms.

These actions were discussed with the seven prequalified bidders at a pre-bid conference held at the Farley building on March 1, 2012. The revised drawings and specifications were picked up by the interested bidders after the conference. The Information for Bidders and Contract were sent to all the bidders on March 7, 2012. In addendum 2, the original bid date of April 5, 2012 was extended to April 26, 2012.

Bidders were requested to submit lump sum prices for two options: 1) the West End Concourse Expansion including a new waiting area and 2) an alternate of the West End Concourse Expansion without the new waiting area. Bidders were informed that the alternate option would only be exercised if the bids were in excess of the engineers estimate and there was insufficient funding for the alternate.

On April 26th bids were received from three firms: Yonkers Moynihan JV; Tudor Perini Corporation; and Skanska USA Civil Northeast. Granite Construction Northeast; Judlau Contracting, Inc; Kiewit Infrastructure Co.; and Moynihan S&P Joint Venture all advised that they would not submit a bid.

Skanska USA Civil Northeast submitted the low bid of \$147,750,000 for the West End Concourse with the new waiting area.

This bid was below the engineer's estimate and within the available funding for the construction contract, and so the bids for the alternate were not considered.

Between April 26, 2012 and April 30, 2012, the Port Authority and MSDC reviewed the bid packages based on the lowest bid amount.

- The bid packages were evaluated by the Port Authority and the Railroads to determine if the work plans are feasible.
- Two low-bid interviews were held with Skanska to review their project assumptions and estimating approach.
- A background review was updated by PANYNJ to verify that no new red flags have appeared on the record for Skanska USA Civil Northeast.
- Skanska's D/M/WBE participation plan was reviewed for compliance by MSDC.
- A meeting was held with Skanska's Compliance Officer to guarantee that Skanska will comply with the MSDC D/M/WBE Plan.
- A Construction Steering Committee meeting was held on April 27, 2012.

Using the total authorized project amount of \$294,926,855 (as described in attachment A) the West End Concourse Expansion Work including the new waiting area will be awarded, in the amount of \$147,750,000 to Skanska USA Civil Northeast.

Attachments A & B provide additional information and a comparison of the bid results.

Angel Martinez, RA, PP
Program Director – Moynihan Station Redevelopment

Concurred: _____
Andrew Lynn, Director, Planning & Regional Development

Approved: _____
Timothy Gilchrist, President, Moynihan Station Development Corp.

Attachment A Recommendation for Award

Objectives of Action: To increase passenger flow and accessibility to the west end of New York Penn Station.

Recommendation: That the Board of the Moynihan Station Development Corporation award the Phase I Contract to Skanska USA Civil Northeast at an estimated total contract amount of \$147,750,000 (Bid). In addition, per standard Port Authority practice, contract award shall contain an authorization for extra work (work found necessary after the contract begins to address unforeseen field conditions or to correct ambiguities in the contract documents), net cost work (specific items of work that are anticipated but the extent of which cannot be known until the work begins) and contingency (additional work which is not anticipated at the time of award but which, because of the nature of the project, could be required upon the happening of certain events).

Available Funding:

Grant	Amount
TIGER	\$83,000,000
TEA-21	\$10,292,623
Appropriations – FY01, FY02, FY03	\$59,826,775
SAFETEA-LU	\$14,061,390
FHWA	\$1,246,067
CMAQ	\$65,000,000
MTA	\$33,500,000
Port Authority of NYNJ	\$10,000,000
Life Safety	\$12,000,000
Amtrak	\$6,000,000
Total Funding	\$294,926,855

Background: Moynihan Station has gone through several iterations over the years. Currently, the plan is to build a new train hall in the Farley Post Office Building in two phases. Phase 1 is to build new entrances to the platforms through the northeast and southeast corners of the Post Office, to double the width of the West End Concourse and 33rd Street Connector, provide new "vertical access elements" (escalators, elevators, stairs) to the platforms, install an emergency platform ventilation systems and other infrastructure upgrades. This project is a pre-requisite to the opening of Phase 2.

Phase 1 was initially bid as one project, but consists of three sub-projects, which can be separately bid and awarded:

- West End Concourse Expansion and related Railroad work with an alternate that included a new waiting area;
- Platform Ventilation System;
- 33rd Street Connector and Subway work.

With the conclusion of the first round of bidding, it became apparent that it would be necessary to stage the implementation of Phase 1 in order to live within the currently available funding. This approach has the concurrence of USDOT, FRA, Amtrak, MTA, LIRR, NJ Transit and the Fire Department of New York.

It is the intention of Moynihan Station Development Corporation to complete all of the sub-projects that are part of Phase 1 and to stage them so that their completion is within the original 2016 timeframe.

Stage 1: West End Concourse Expansion. This sub-project takes the longest to complete, is the most complex and provides the most service and access improvements to the public. The scope of the West End Concourse project complies with NFPA 130 and provides a number of important access, egress and life safety benefits to passengers of Penn Station and the future Moynihan Station.

Stage 2: Platform Ventilation System. This sub-project has a shorter duration time than the West End Concourse. The project can be built with minimal impact on the railroads by using extended outages in 'C' and 'E' yards. With the design complete, this project can be started as soon as funding becomes available.

Stage 3: 33rd Street Connector and Subway Work. Passenger modeling has shown that the capacity provided by this project is not necessary until the completion of Phase 2 of the Moynihan Project (completion of the train hall) and deferring it will have no near-term until the future horizon year of 2035. This project also has the shortest construction duration. And because of the size of the contract and scope of work, it is anticipated that there is a wider pool of qualified bidders for this work than for the other Phase 1 improvements.

Name and Address of Awardee: **Skanska USA Civil Northeast**
16-16 Whitestone Expressway
Whitestone, NY 11357

Expected Impacts: Increased passenger flow and accessibility to the west end of New York Penn Station.

Environmental Impacts: The contractor will be required to recycle no less than 75 percent by weight of certain types of designated debris material (e.g., asphalt concrete, Portland cement concrete, steel and excess unrestricted soil) arising from the work associated with this contract.

Expected Duration
& Milestones:

Approximate Start: May 25, 2012
Approximate End: September 16, 2016

Milestone	Date (based on 5/25/2012 NTP)
Milestone No. 1 – Completion of erection and enclosure of the West End Concourse, including but not limited to reinforcement (footings, columns and girders), erection of steel, column encasement, installation of decking and concrete, fireproofing and temporary enclosure.	May 30, 2015
Milestone No. 2 – Final Completion of all work	July 28, 2016

Alternatives
Considered:

The bidder's Proposal must provide a separate lump sum price for the Work described in the Contract Documents as the West End Concourse and a deduct price for the Alternate described in the Contract Documents. The Proposal also must include a Bid Analysis using the Bid Analysis breakdown that is part of the Proposal form annexed hereto.

In the event that the lowest total lump sum price for the Work exceeds MSDC's available funding, Proposals from responsible bidders will be compared on the following basis, in the following order, to determine the lowest total lump sum price within the available funding without the Work covered in the Alternate.

Scope of Work:

The existing West End Concourse (WEC) currently serves as a secondary access point for LIRR commuters to train platforms. It will be expanded in length to serve nine of the station's twelve train platforms and width to improve passenger circulation and capacity. Two new entrances that will allow direct passenger access from Eighth Avenue to the West End Concourse are included in Phase 1. Portions of the existing "moat" wall at the 31st and 33rd street corners of Eighth Avenue will be removed in order to establish new public plazas marking the street level entrances to Moynihan Station. Force protection (bollards) will be designed to protect the Eighth Avenue and portions of the 31st and 33rd Street frontage of the Farley building. Work includes the removal of the moat walls to accommodate the new entrance requirements. The moat decks to be re-sloped and new steps installed in the northeast moat. All existing architectural finishes to remain is to be fully cleaned and restored within the limits of the project scope, and any fabric that is disturbed by the design for the new architecture, such as that adjacent to the removed historic moat walls, is to be fully repaired. A fire standpipe that was originally part of the Platform Ventilation work has been added to this scope. Installation of four columns along track #21 to support the future Connecting Corridor and subway area work has been added to this scope.

The Railroad system work is associated with the area under the existing Farley building in the Penn Station Train shed. This work will include all related adjusting and modifying of all railroad systems to be impacted by Packages 1, 2 and 4. Including but not limited to Plumbing, Electrical and communication Systems. Also included in this package for reference are Drawings related to Electrical Traction and Signal Systems, which is to be done by Amtrak Force Account.

Other Contract
Provisions:

Net Cost Work: Furnish and install additional conduits when existing conduits shown on the contract drawings are found to be damaged, crushed or full; remove existing abandoned cables from conduits to free space for new cables shown on the contract drawings; remove and replace existing damaged wiring not shown on the contract drawings; removal and replacement of existing cables not shown on the contract drawings; repairs and/or modifications to existing electrical or communications equipment, when such electrical or communication equipment is found to be blocked or damaged; locate and uncover buried manholes, handholes, electrical boxes, or electrical cans and raise to final grade; testing, transportation and disposal of excess unsuitable or contaminated material off-site, and furnish clean soil backfill, if required; transportation and disposal off-site or treatment, testing and discharge on-site of contaminated effluent from dewatering operations; storm drainage system investigation and repairs as required; removal and re-installation of chain link fence; test pits; security personnel and equipment as required to support the work in sensitive areas; abatement of incidental asbestos and lead contaminating materials not shown or specified on the contract drawings or in the contract book; existing facility use and fire alarm system integrator; all NYC traffic agents; concrete chipping, beyond limits shown in contract documents; repairs and/or modifications to existing mechanical equipment including but not limited to ductwork, piping, and associated appurtenances that are not shown on the contract drawings; fire watch where not shown or specified on the contract drawings or in the contract book; existing facility use and fire alarm system integrator; emergency delays.

Selection Process:

Bids were solicited from a list of seven pre-qualified bidders.

Granite Construction Northeast, Inc.

Judlau Contracting, Inc.

Kiewit Infrastructure Co.

Moynihan S & P Joint Venture

Skanska USA Civil Northeast, Inc.

Tutor Perini Corporation

Yonkers Moynihan JV

Reason Selected
Over Others:

Lowest Responsive Bidder

Bid Array: The following bids were received on April 26, 2012:
Bids based on the total scope of work.

Firm:	Bid Amount:
Skanska USA Civil Northeast, Inc.	\$ 147,750,000
Tutor Perini Corporation	\$ 157,457,000
Yonkers Moynihan JV	\$ 157,411,000

Engineer's Estimate: \$162,627,328

Background Qualification After reviewing the Pre-Qualification submissions from the four likely bidders, only Tutor Perini provided additional explanation regarding prior responsibility determinations. Granite, Skanska, and Yonkers (along with F.W. Sims) all affirmed the required certifications for NY State (Disclosure of Prior Non-Responsibility Determinations) and Federal (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion; Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352).

Minority Participation: The contractor shall make its best efforts to achieve utilization of DBEs/MBEs/WBEs equal to 20% of the total value of the Work and an overall goal of 25% Minority/Female Workforce for the Contract.

Basic Contract Terms: Contract Amount: \$ 147,750,000

In addition, per standard Port Authority practice, contract award shall contain an authorization for extra work (work found necessary after the contract begins to address unforeseen field conditions or to correct ambiguities in the contract documents), net cost work (specific items of work that are anticipated but the extent of which cannot be known until the work begins) and contingency (additional work which is not anticipated at the time of award but which, because of the nature of the project, could be required upon the happening of certain events).

Authorization Mechanism: Board Action

Attachment B
Moynihan Station Program - Phase I
Contract Bid Matrix

4/26/2012

Bidders

	Lump Sum	Deduct Alternate
Skanska USA Civil Northeast, Inc.	\$147,750,000	\$146,111,000.00
Tutor Perini Corporation	\$157,457,000	\$154,563,000.00
Yonkers Moynihan JV	\$157,411,000	\$155,811,000.00

Moynihan Station Development Corporation

FOR CONSIDERATION

May 9, 2012

TO: The Directors

FROM: Tim Gilchrist

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

REQUEST FOR: Approval for MSDC to Purchase Owner’s Interest General Liability Policy for Phase 1 of the Moynihan Station Project

BACKGROUND

For Phase 1 of the Moynihan Station Project, MSDC is requiring that the selected contractor implement and manage a Contractor Controlled Insurance Program (CCIP). Coverage under this policy will be on an occurrence basis and have limits of liability of not less than \$200 million for each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability and \$200 million annual aggregate for the Project. The aggregate limit shall reinstate annually. The deductible amount or self-insured retention is \$500,000 per occurrence and \$500,000 in the annual aggregate with a \$5 million policy aggregate.

It will include MSDC, ESD, PANYNJ, Amtrak, MTA-Long Island Railroad and MTA-New York City Transit as Named Insureds.

However, MSDC will also procure a supplemental Owner’s Interest General Liability policy which will provide additional coverage for MSDC in certain circumstances. These may include, but are not limited to, the following:

- Accidents that resulted from negligence of MSDC employee independent of the operations of the contractor;
- Incidents relating to the Phase 1 work and work area in which the contractor is not involved.

Cool Insuring Agency, the ESD and MSDC insurance broker, was asked to solicit quotes for the Owner’s Interest General Liability policy Phase 1.

Cool was asked to investigate three different levels of coverage:

- \$2,000,000
- \$5,000,000
- \$10,000,000

The Owner's Interest GL policy will be a supplement the CCIP, and it is dependent on the CCIP including MSDC as a Named Insured.

Cool approached in excess of 20 carriers for quotes for this policy, most of which declined to provide a quote. The following companies solicited by Cool quoted the lowest premiums, and the other interested carriers declined to match these quotes.

\$2,000,000 Limit w/ Colony Insurance Company

General Aggregate --	\$4,000,000
Deductable --	\$20,000
Term Premium --	\$242,300
Tax/Fee --	\$14,532.40
Total --	\$256,832.40

*This policy would be for 36 months, and it would be renewed as necessary.

\$3,000,000 Excess of Colony Policy w/ Mt. Hawley

Term Premium --	\$105,000
Tax/Fee	\$3,990
Total:	\$108,900

*This policy would be for 36 months, and it would be renewed as necessary.

\$5,000,000 Excess of Colony & Mt. Hawley w/Axi

Term Premium --	\$125,000
Tax/Fee	\$4,750
Total:	\$129,750

*This policy would be for 36 months, and it would be renewed as necessary.

Estimated Cost of Services

MSDC believes that these rates are fair and reasonable. In light of the reasonableness of these premiums, it would be prudent to procure the full \$10,000,000 in coverage. Because the premiums cover a 36 month term, the policies will need to be renewed in order to cover the life of the Phase 1 project.

The total cost of \$10,000,000 in coverage for 36 months would be \$495,482.

It is expected that the policies would be renewed at a similar rate after 36 months, though for a shorter term reflecting the expected 54 month total construction duration. Staff would return to the MSDC to renew these policies.

Total cost of the Owner's Interest GL policy for Phase 1 is expected to be no more than \$1,000,000.

ENVIRONMENTAL REVIEW

The Moynihan Station Development Project was the subject of an environmental review performed by ESDC as the lead agency. A Final Environmental Impact Statement ("FEIS") was prepared pursuant to the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. SEQRA Findings were adopted by ESD Directors on August 14, 2006. In addition, the ESD Directors made a Determination that No Supplemental Environmental Impact Statement is warranted based on the results of a Technical Memorandum prepared in support of the project changes represented in the 2010 Amended General Project Plan that was affirmed on June 24, 2010. The activities in this request for authorization have been addressed in the FEIS, the SEQRA Findings, and the Technical Memorandum, and therefore, no further environmental review is required in connection with this request.

RESPONSIBLE PARTIES

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 agreement; and b) consulted the list of officers determined to be non-responsible bidders and debarred officers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

AFFIRMATIVE ACTION

There are no NYS certified MWBE insurance carriers and therefore the goal for this contract is 0%. However, there are opportunities to do business with MWBE firms as part of ESD's contract for insurance advisory and brokerage services with Cool. At this time, MWBE participation with Cool is approximately 15% and Cool continues to explore avenues to further increase participation. (Please note that the contract for insurance advisory and brokerage services is a separate ESD board authorization.)

REQUESTED ACTIONS

The Directors are requested to authorize the Corporation to procure an Owner's Interest General Liability policy with a \$10,000,000 as detailed above.

RECOMMENDATION

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

ATTACHMENT

Resolutions

May 9, 2012

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Purchase Owner’s Interest General Liability Policy for Phase 1 of the Moynihan Station Project 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 Colony Insurance Company, Mt. Hawley Insurance Company and Axis Insurance to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized purchase an Owner’s Interest General Liability policy for Phase 1 of the Moynihan Station Project for an amount not exceed \$495,482 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.

* * *

Moynihan Station Development Corporation

FOR CONSIDERATION

May 9, 2012

TO: The Directors

FROM: Tim Gilchrist

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

REQUEST FOR: Authorization to Amend Contracts for Architectural, Engineering, Design, and Construction Phase Services with: (a) Skidmore, Owings & Merrill LLP; (b) PB Americas, Inc.; and (c) SYSTRA Engineering, Inc.; and Authorization to Take Related Actions

BACKGROUND

In April 2010, the Directors authorized Moynihan Station Development Corporation (“MSDC”) to enter into separate contracts with Skidmore, Owings & Merrill, LLP (“SOM”), PB Americas, Inc. (“PB”), and SYSTRA Engineering, Inc. (“SYSTRA”) for architectural and engineering services on Phase 1 of the Moynihan Station Project.

These original contracts anticipated that SOM, PB and SYSTRA would use design documents prepared for the designated developer in 2006 as the basis for completing construction documents to solicit public bids for the Phase 1 improvements. This design effort required extensive coordination between SOM, PB and SYSTRA and the numerous project stakeholders, which included FRA, AMTRAK, LIRR, MTA, NYCTA, SHPO, FDNY, NYPD, NYCDOT, NYCDEP and USPS among others.

The base contract and contingency amounts previously authorized by the Directors are as follows:

Consultant	Base Contract	Contingency	Total
SOM*	\$6,292,358	\$824,572	\$7,116,930
PB	\$1,573,250	\$226,750	\$1,800,000
SYSTRA	\$1,450,312	\$349,688	\$1,800,000
TOTAL	\$9,315,920	\$1,401,010	\$10,716,930

** Includes amendment for pedestrian circulation studies authorized by the Directors in October 2010.*

The base contracts only included amounts for Design Phase Services. While the original contracts anticipated Construction Phase Services and included scope to that effect, the

negotiation of the fees for this phase were deferred until the construction schedule and construction staging plan were more fully developed.

Approval is sought for three actions:

- 1) Due to the level of effort involved in resolving all stakeholder comments successfully, additional funding beyond the previously authorized contingencies are requested for PB and SYSTRA as explained below.
- 2) As a result of the higher than anticipated Phase 1 Construction Contract bids, MSDC and the Port Authority of New York and New Jersey (“PANYNJ”), directed SOM, PB and SYSTRA to rapidly evaluate rebidding options and prepare new bid packages for expanding the West End Concourse as a stand-alone project. This recent rebidding effort has resulted in increased scope and fees that were not covered under the existing contracts and are described in detail below.
- 3) As the Engineer/Architect-of Record (E/AOR) responsible for signing and sealing the contract documents, SOM, PB and SYSTRA have an obligation to verify that work has been carried out in accordance with the intent of the design. Therefore, amendments to all three consultants for Construction Phase Services are requested as further described below.

PROPOSED CONTRACT AMENDMENTS

SOM

To date, MSDC and PANYNJ have drawn on the SOM contract contingency to approve change orders totaling **\$571,884**.

All of these change orders were in response to requests from the various project stakeholders that were beyond the scope of SOM’s base contract, including:

- **\$200,000** to develop design alternatives and construction documents for a passenger waiting area in the expanded West End Concourse at the request of LIRR;
- **\$80,000** to reconfigure and expand the 33rd Street corner subway entrance and the 33rd Street Connecting Corridor at the request of NYCTA;
- **\$80,000** for additional civil engineering surveys, test pits, vehicle vector threat analyses, and storm water drainage and pavement plans to accommodate a realignment of security bollards at the request of NYPD and NYCDOT; and
- **\$211,884** to prepare construction staging drawings that illustrate contractor work areas.

Additionally, after the Board determined to rebid the project, MSDC and PANYNJ requested that SOM re-package the Phase 1 bid documents to make the West End Concourse a stand-alone project. This work includes evaluating various alternatives and approaches to the scope, cost and constructability of the West End Concourse; modifying mechanical and electrical systems based on separating the 33rd Street Connecting Corridor; adjusting structural work based on separating all subway elements from the 33rd Street entry plaza; modifying staging drawings to account for the adjusted scope; and necessary support during the bidding process.

This additional work cost approximately **\$200,000**, which can be funded within the remaining **\$242,688** of the SOM contract contingency.

As such, staff is not seeking any additional authorization to increase the SOM contract for Design Phase Services.

SOM, however, will have the most active Construction Phase Services role of the three design consultants during the West End Concourse Expansion project.

MSDC and PA negotiated a fee of **\$5,225,000** to cover the four and half year duration of construction. Staff recommends a 10% contingency of **\$522,500**.

MSDC, therefore, requests authorization to amend the Construction Phase Services portion of the SOM contract by a total of **\$5,747,500**, for a new total contract amount not to exceed **\$12,864,430**, inclusive of contingency.

PB

To date, MSDC and PANYNJ have drawn on the PB contract contingency to approve change orders totaling **\$207,193**.

All of these change orders were in response to requests from the various project stakeholders that were beyond the scope of PB's base contract, including:

- **\$97,260** for additional computational fluid dynamics (CFD) analyses to validate the efficacy of the proposed platform ventilation system as requested by AMTRAK and FDNY;
- **\$54,933** for extending the fire standpipe system across the western end of all the tracks and platforms in the Penn Station train shed as requested by FDNY; and
- **\$55,000** for a cost estimate of the bid package which was not included in their base contract.

After these tasks a contingency of **\$19,557** remains.

Additionally, PB was instructed to undertake two tasks which were not in the original scope and cannot be funded from the remaining contingency.

First, PB carried out certain work when Amtrak requested that the Project contribute \$500,000 towards the relocation of the sectionalizing switches adjacent to the WEC instead of procuring new equipment for their future maintenance. This work included preparing a space allocation sketch for relocating the section switches to the south wall of Penn Station, investigating structural framing for up to two (2) cages for holding the relocated switches, reconfiguring equipment layouts to provide additional space to access pull boxes on south wall, and exploring the feasibility of switching the incoming electrical service from 120/208V to 265/460V. This additional design work totaled **\$207,000**.

MSDC and PANYNJ also requested that PB support SOM to re-package the Phase 1 bid documents, which included the following work:

- Evaluating various alternatives and approaches to the scope, cost and constructability of the Platform Ventilation system to make the West End Concourse a stand-alone project;
- Performing pedestrian circulation modeling to analyze the impact of separating the 33rd Street Connecting Corridor;
- Modifying the scope of the fire standpipe system to be included in the West End Concourse project; and
- Necessary support during the bidding process.

This additional work totaled **\$23,000**.

Therefore, MSDC requests authorization to increase the Design Phase Services portion of the PB contract by **\$230,000** to respond to the various Amtrak requests and to re-package the Phase 1 bid documents as described above.

Because of PB's limited role in the West End Concourse Expansion, the amount for Construction Phase Services for this part of the Phase 1 work is estimated to be only **\$85,000**. Staff recommends a 10% contingency of \$8,500.

MSDC, therefore, requests authorization to amend PB's existing contract by a total of **\$323,500**, for a new total contract amount not to exceed **\$2,123,500**, inclusive of contingency.

SYSTRA

To date, MSDC and PANYNJ have drawn on the SYSTRA contract contingency to approve change orders totaling **\$349,000**.

All of these change orders were in response to requests from the various project stakeholders that were beyond the scope of SYSTRA's base contract and do not include any work necessary to meet Amtrak's standard requirements. This additional work included:

- **\$143,000** to develop new catenary alignments and attachments to accommodate a passenger waiting area in the expanded West End Concourse at the request of LIRR;
- **\$68,500** to investigate various options for a new catenary maintenance vehicle as an alternative to Amtrak's request to relocate section switches; and
- **\$137,000** to modify railroad systems to accommodate the reconfiguration of the 33rd Street corner subway entrance and 33rd Street Connecting Corridor at the request of NYCTA.

Additionally, in response to specific requests from AMTRAK, SYSTRA prepared bid-ready construction documents and specifications for railroad systems work that Amtrak requested a contractor perform rather than using its own forces, took tension readings on all catenary wires throughout Penn Station, incorporated additional electric traction shielding drawings, and developed a design for performing catenary work in two weekends instead of one at specific

tracks and crossovers to accommodate AMTRAK’s manpower limitations with respect to ET. These additional design phase services total **\$288,578** beyond the previously authorized contingency of **\$349,688**.

MSDC and PANYNJ also requested that SYSTRA re-package the Railroad Systems portions of the Phase 1 bid documents to make the West End Concourse a stand-alone project. This work includes designing the removal and dead-ending of catenary from tracks 18 through 21 to significantly reduce contractor cost and risk during construction; revising commercial electric drawings based on separating the Platform Ventilation and Connecting Concourse scope; modifying staging drawings to account for the adjusted scope; and necessary support during the bidding process for a total of **\$141,422**.

Therefore, MSDC requests increasing the Design Phase Services portion of the SYSTRA contract by **\$430,000** to respond to the various Amtrak requests and to re-package the Phase 1 bid documents as described above.

SYSTRA will have a significant role in the construction phase of the West End Concourse Expansion. After negotiations with MSDC and PANYNJ, SYSTRA’s Construction Phase Services fee is \$1,360,000 for the four and half year duration of construction. Staff recommends a 10% contingency of \$136,000.

MSDC, therefore, requests authorization to amend SYSTRA’s existing contract by a total of **\$1,926,000**, for a new total contract amount not to exceed **\$3,726,000**, inclusive of contingency.

SUMMARY

Based on the foregoing, MSDC, in close coordination with PANYNJ, seeks to amend the contracts with SOM, PB and SYSTRA to continue their role as the architects and engineers of record through the construction phase of the West End Concourse Expansion.

Consultant	Previously Authorized Contract*	Additional Design Services	Construction Phase Services	Construction Phase Contingency	Amended Contract Total
SOM	\$7,116,930	\$0	\$5,225,000	\$522,500	\$12,864,430
PB	\$1,800,000	\$230,000	\$85,000	\$8,500	\$2,123,500
SYSTRA	\$1,800,000	\$430,000	\$1,360,000	\$136,000	\$3,726,000
TOTAL	\$10,716,930	\$660,000	\$6,670,000	\$667,000	\$18,713,930

** Includes previously authorized contingencies.*

The amended contract terms will cover the four and a half year schedule for construction of the West End Concourse Expansion.

All fees have been negotiated in conformance with the Governor Cuomo's Executive Order #10 regarding Reducing Costs for Personal Services Contracts and every effort will be made to carry out the work in an efficient manner.

As funding becomes available, the remaining stages of Phase 1 will proceed and MSDC will seek authorization from the Directors to amend the SOM, PB and SYSTRA contracts further to encompass Construction Phase Services associated with those stages of the Phase 1 work.

FUNDING

The amendments to these contracts will be funded from the Phase 1 budget with 100% funding from the Federal Railroad Administration ("FRA"), which is drawn on a reimbursement basis 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 SOM, PB and SYSTRA to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff finds SOM, PB and SYSTRA to be responsible.

AFFIRMATIVE ACTION

MSDC's DBE/MBE/WBE Program Plan will apply to these contracts. SOM, PB and SYSTRA 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 to amend these contracts for architectural and engineering, services constitutes a Type II action as defined by the New York State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required with this authorization.

REQUESTED ACTIONS

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

RECOMMENDATION

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

ATTACHMENTS

Resolution

May 9, 2012

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contracts for Architectural, Engineering, Design, and Related Services with: (a) Skidmore, Owings & Merrill LLP; (b) PB Americas, Inc.; and (c) SYSTRA Engineering, Inc.; and Authorization to Take Related Actions

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

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the existing contract with SOM and increase the amount of such contract by \$5,747,500 to a new aggregate limit of \$12,864,430 for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; 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 \$323,500 to a new aggregate limit of \$2,123,500, for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the existing contract with SYSTRA and increase the amount of such contract by \$1,926,000, to a new aggregate limit of \$3,726,000, 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.

* * *

Moynihan Station Development Corporation

FOR CONSIDERATION

May 9, 2012

TO: The Directors

FROM: Timothy J. Gilchrist

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

REQUEST FOR: Authorization to Enter into a Construction License and Force Account Agreement with the Long Island Rail Road (LIRR) to support Phase 1, Moynihan Station; Authorization to Take Related Actions

BACKGROUND

The Metropolitan Transportation Authority (MTA) and MTA Long Island Rail Road (the MTA Parties) are important partners and stakeholders in Phase 1 of the Moynihan Station project. An agreement has been negotiated with the MTA parties that will: (i) provide for the use of the MTA funding for the Project's Phase 1, (ii) have LIRR grant to MSDC a license to enter the LIRR premises to perform the Phase 1 work, and (iii) create a force account agreement for the cost of LIRR staff and contractors reviewing, approving drawings and specifications and assist MSDC with respect to Project work performed in the LIRR premises and inspecting such work.

The approved 1995-99 MTA Capital Plan originally had \$35 million allocated for the Moynihan Station project ("MTA Capital Program Funds"). Of that amount, \$2 million already has been provided to the Project for environmental work under an earlier agreement, \$1.2 million was provided for Phase 1 final design phase, \$3.5 million was used for other purposes, and the \$28.3 million remains available for Phase 1 construction.

In order to reflect its commitment to the Project, LIRR and MTA agree to provide \$4,000,000 to the Project to facilitate construction methods and means that permit a portion of the WEC to remain open on weekdays for customer use throughout project construction as reflected in the contract documents. This brings to \$32,300,000 the available funding from the MTA for the construction phase of Phase 1.

PROPOSED AGREEMENT

The Construction License and Force Account Agreement will reflect the following:

1. LIRR grants MSDC a license to enter upon and use the defined LIRR premises to perform the Phase 1 work, which includes the design, construction, installation and inspection of the Phase 1 improvements;
2. LIRR will review for approval all remaining Phase 1 design and construction documents, including staging plans, work schedules, site-specific work plans and change orders;
3. MTA's maximum total contributions to Phase 1 will be \$33.5 million. MTA already has paid the sum of \$1,200,000 to MSDC to fund a portion of the WEC design work;
4. MTA will pay MSDC the remaining MTA Capital Program Funds according to the schedule set forth within the contract. The remaining MTA Capital Program Funds will be used to fund a portion of the cost of construction of the West End Concourse;
5. MSDC agrees that MTA/LIRR must approve any changes in scope to the WEC portion of the Phase 1 work and the corresponding Approved Plans;
6. During construction, LIRR agrees to the following review schedule for changes to the Approved Plans: Within three (3) business days of the receipt of a change notice, LIRR will designate the change either minor or major and shall provide reasons for such designation. If designated minor, within twelve (12) business days following the change notice, or if major, within seventeen (17) business days following the change notice, LIRR will either give its written approval or will request revisions or modifications. For changes in design that require immediate action due to the impact on the critical path of Project work, LIRR will endeavor to expedite the review process in order to maintain the schedule.
7. LIRR Project Management and Force Account costs during the Phase 1 construction period, up to \$1.5 million, will be deducted from the MTA Capital Program Funds in advance of scheduled payments to MSDC. MSDC and LIRR agree that in January 2014 the Force Account Estimate will be reviewed based upon actual work performed by LIRR through December 2013 and shall be increased or decreased as necessary to reflect actual experience and projected reimbursable costs through completion of the Phase 1 Work.
8. The Parties recognize that scheduling of track and yard outages in Penn Station is under the control of Amtrak with concurrence by LIRR to the extent they impact track usage by LIRR, and LIRR will cooperate with Amtrak and the Phase 1 construction team to effectuate the provision of track and yard outages in Penn Station that are scheduled by Amtrak.

9. MSDC, LIRR, and Amtrak will have regular project meetings each week to review the rolling (8) week schedule and upcoming outages.
10. MSDC and its contractors will incur a penalty of \$250 per minute for any delay longer than five minutes in returning tracks to LIRR after a scheduled track outage.
11. LIRR will be included in and indemnified by insurance coverage procured by the Project sponsors under the most cost-effective option.
12. The Phase 1 improvements will be owned by Amtrak and maintained subject to the tri-venture arrangement between LIRR, Amtrak and New Jersey Transit that applies to operations in and around Penn Station.
13. Exhibits for the Moynihan Phase 1 drawings and specifications will be included.

MSDC and LIRR will enter into a separate agreement amending the easement granted by USPS to LIRR to allow for the construction of the original WEC. As the owner of the Farley building and the successor party to USPS, ESDC has authorized MSDC to enter into this agreement to expand this easement to include the areas that will be encompassed by the expanded WEC.

ESTIMATED COST OF SERVICES

The Construction License and Force Account Agreement will provide for LIRR Project Management and Force Account costs incurred as part of the Phase 1 project, up to \$1.5 million, to be deducted from the remaining MTA Capital Program Funds before they are transmitted to MSDC according to the schedule set forth within the contract.

ENVIRONMENTAL REVIEW

ESD, as lead agency on behalf of MSDC, conducted an environmental review of the 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 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 MTA-LIRR's ability to perform the services provided for in the proposed agreement; and b) consulted the list of officers determined to be non-responsible bidders and debarred officers maintained by the New York State Office of General Services. Based on the foregoing, staff considers MTA-LIRR to be responsible.

AFFIRMATIVE ACTION

The Metropolitan Transportation Authority (MTA) and Long Island Rail Road (LIRR) Non-Discrimination and Affirmative Action policies will apply.

REQUESTED ACTIONS

The Directors are requested to authorize the Corporation to enter into a Construction License and Force Account Agreement with LIRR to include all necessary tasks associated with LIRR's required review and approval of drawings and specifications for Phase 1, Moynihan Station. Such action will allow for the payment of the remaining MTA Capital Program Funds to MSDC for the MTA portion of the Phase 1 improvements.

RECOMMENDATION

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

ATTACHMENT

Resolution

May 9, 2012

MOYNIHAN STATION DEVELOPMENT CORPORATION - New York (New York County) – Moynihan Station Civic and Land Use Improvement Project – a Construction License and Force Account Agreement with the Long Island Rail Road (LIRR) to support Phase 1, Moynihan Station; Authorization to Take Related Actions.

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 the Long Island Railroad (LIRR) to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a Construction License and Force Account Agreement with MTA and LIRR on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the Corporation may enter into a separate agreement with LIRR amending the easement granted by the United States Postal Service (“USPS”) to LIRR for the construction of the original West End Concourse (“WEC”) in order to include the areas that will be encompassed by the expanded WEC; 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.

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Moynihan Station Development Corporation

FOR CONSIDERATION

May 9, 2012

TO: The Directors

FROM: Tim Gilchrist

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

REQUEST FOR: Authorization to Amend Contracts for Consulting Services with the Port Authority of New York and New Jersey

BACKGROUND

On October 6, 2010 the Board authorized MSDC to enter into a consulting services agreement with the Port Authority of New York and New Jersey (PANYNJ). This agreement covered engineering support and oversight for Phase 1 of the Moynihan Station Project and planning, legal, and real estate support from PANYNJ staff for Phases 1 and 2 of the Project.

The Board authorized an amount of \$4,500,000 to cover the cost of the engineering support and oversight of Phase 1. These funds were dedicated to the staff time and overhead costs for PANYNJ staff serving as Phase 1 Engineering Program Director, Design Manager, Engineer of Construction, and Senior Resident Engineer.

PANYNJ staff costs for planning, legal and real estate support for the Project were not authorized to be reimbursed.

PANYNJ has performed its duties with distinction. MSDC and PANYNJ staff collaborate together seamlessly in the implementation of the Project, including Final Design of Phase 1, procurement of the Phase 1 contractor(s), and planning and development for Phase 2 and the associated real estate transactions.

Materials & Special Testing

The original contract, however, did not contemplate services for materials and special testing. During the Final Design and construction contract procurement phases of Phase 1, MSDC and PANYNJ determined the necessary requirements for materials and special testing for the Project. The PANYNJ Materials Department can perform these services for \$900,000 inclusive of a 10% contingency. At the request of MSDC, PANYNJ requested that the Construction Manager (STA) solicit quotes for the same scope of work. The quote was for \$1,075,000

inclusive of a 10% contingency. MSDC believes that it is in the best interest of the Project to utilize the materials and special testing services that the PANYNJ Material Department can provide and that this is also the most cost effective alternative.

Phase 2 Estimating Services

With Phase 1 moving into the construction phase, MSDC is renewing attention to the tasks necessary to advance Phase 2 of the Project—the construction of the intercity train hall. As part of this process, MSDC and PANYNJ recently led a planning exercise with Amtrak and Skidmore, Owings, Merrill (SOM) to better refine the Phase 2 train hall plans. As result of this exercise, SOM produced revised conceptual plans and an accompanying estimating package. MSDC believes that it is essential to move forward with this estimating exercise before financing discussions for Phase 2 can begin in earnest.

PANYNJ has proposed to carry out this work at a cost of \$37,500. MSDC staff believes that this amount is fair and reasonable and in line with or below market rates.

PROPOSED CONTRACT AMENDMENTS

MSDC staff recommends amending the consulting services agreement with PANYNJ to include the following:

- Materials and Special Testing for Phase 1 of the Moynihan Station Project at a cost of \$900,000, including contingency.
- Work necessary to complete the estimating of the Phase 2 train hall conceptual plans for a cost of \$37,500 with a 10% contingency of \$3,750.

The total amount of increase in the contract requested is \$941,250, which would bring the total contract amount to \$5,441,250.

FUNDING

The amendments to these contracts will be funded as follows:

- Materials and Special Testing from a combination of PANYNJ funds for Phase 1 and Federal Railroad Administration grants for Phase 1.
- Phase 2 Estimating from funds remaining from the PANYNJ transfer to ESDC/MSDC to complete the purchase of the James A. Farley building from USPS.

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 PANYNJ 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 PANYNJ to be responsible.

AFFIRMATIVE ACTION

PANYNJ's Non-Discrimination and Affirmative Action policies will apply.

ENVIRONMENTAL REVIEW

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

REQUESTED ACTIONS

The Directors are requested to authorize the Corporation to amend the existing contract with PANYNJ for consulting services, as set forth in these materials.

RECOMMENDATION

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

ATTACHMENTS

Resolution

May 9, 2012

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contracts for Consulting Services with the Port Authority of New York and New Jersey; 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 the PANYNJ 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 the PANYNJ and increase the amount of such contract by \$941,250 to a new aggregate limit of \$5,441,250 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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