

**MOYNIHAN STATION DEVELOPMENT CORPORATION**

**MEETING OF THE DIRECTORS**

**WEDNESDAY**

**JUNE 27, 2012**

**2:00 p.m.**

**MOYNIHAN STATION DEVELOPMENT CORPORATION**

**MEETING OF THE DIRECTORS**

**TUESDAY**

**JULY 13, 2010**

**EXECUTIVE SESSION**

**PRIVILEGED AND CONFIDENTIAL**

**MOYNIHAN STATION DEVELOPMENT CORPORATION**

Meeting of the Directors  
 Held at the Offices of the  
 Empire State Development Corporation  
 633 Third Avenue  
 37<sup>th</sup> Floor Conference Room  
 New York, New York 10017

**May 9, 2012**

**MINUTES****In Attendance****Directors:**

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

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

Thomas Brennan, Senior Vice President  
 Richard Dorado, Senior Counsel  
 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  
 Rebecca Pellegrini, Project Manager  
 Mehul Petal, Vice President - Development  
 Regina Stephens, Acting Corporate Secretary  
 Thelma Washington, Executive Secretary

**Also Attending:**

Vincent White, USDOT,  
 Rebecca Reyes-Alicea, FRA (via video conferencing)  
 Andrew Lynn, PANY&NJ  
 Angel Martinez, PANY&NJ  
 Kenneth Hanson, Amtrak  
 Frederick Rohn, Holland & Knight  
 Jen Fermino, New York Post

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order at approximately 1:00 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 March 19, 2012 Directors’ meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

154. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 19, 2012 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

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RESOLVED, that the Minutes of the meeting of the Corporation held on March 19, 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.

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Following approval of the Minutes, 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:

155. 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 State Open Meetings Law.

\* \* \*

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

The Executive Session concluded at 1:26 p.m., and Chairman Porcari noted for the record that no votes were taken during the Executive Session.

Following the Executive Session Chairman Porcari asked Timothy Gilchrist to present the President's Report. Chairman Porcari noted for the record that this report is for the Directors information only and no vote would be required.

In his report Mr. Gilchrist stated among other things, the status of the developments since the last Directors meeting on March 19, 2012. He stated that bids were opened for the West End Concourse Expansion work and the Project team recommends that the contract be awarded to the low bidder Skanska USA Civil Northeast, Inc. ("Skanska"). Upon Board authorization, the Project team will work with Skanska to complete final paper work needed to allow Skanska to begin working with the Railroads and obtain the required permits to work within the train shed.

Chairman Porcari asked Mr. Gilchrist when he anticipates a Notice to Proceed. Mr. Gilchrist responded that he anticipates a Notice to Proceed for June 1, 2012, which he knows is aggressive, however, the goal is to make sure all documents are in place when Skanska begins work.

Mr. Gilchrist informed the Directors that the Force Account Agreement with Amtrak and Licensing and Force Account Agreement with the Long Island Rail Road (“LIRR”) are in place. He explained that the Railroads have reached an agreement on maintenance costs for the West End Concourse when it is completed which is a requirement of the TIGER grant.

Mr. Gilchrist stated that the Corporation has acquired General Liability insurance which will back up the insurance policy being provided by the contractor. He stated that Chairman Porcari has met with the Railroads to obtain concessions in work conditions, and that the bid reflects those concessions. Lastly, he stated that MSDC’s main focus will be to finalize Skanska’s contract so that they may begin working as soon as possible.

Mr. Shobowale asked what has been the process to get the Railroads to pitch in and advance the Project to where it is today. Mr. Gilchrist responded that the process entails ongoing daily and weekly meetings among the Construction Manager, the Port Authority of New York and New Jersey (“PANYNJ”) and Amtrak. In addition, the Railroads have a timeframe for approving any changes that are proposed. He stated that there is a Steering Committee

that convenes on a monthly basis. The Steering Committee consists of himself, Angle Martinez and Andrew Lynn of the PANYNJ, Karen Hedlund of the Federal Railroad Administration and senior management of Amtrak and LIRR. When an issue cannot be resolved at the weekly meetings, it is brought to the Steering Committee. If the issue cannot be resolved by the Steering Committee, Mr. Gilchrist then tries to resolve the issue at the next level of management, if not, the Chairman will get involved and talk with the Chairman of the MTA or the CEO of Amtrak to resolve the issue.

Chairman Porcari stated that this process is the reason why the Project has progressed to where it is today and is continuing to moving forward. Chairman Porcari explained that early notification of any issue with the Project and elevating it as quickly as possible even to CEO level, has been successful in reshaping the Project.

There being no further questions or comments from the Directors, Chairman Porcari asked Mr. Gilchrist to present the next Agenda item, requesting authorization to award the construction contract for the West End Concourse Expansion.

In his presentation Mr. Gilchrist stated among other things, that the bids for the West End Concourse Expansion were opened on April 26, 2012. Three bids were received from Skanska, Tutor Perini Corporation and Yonkers Moynihan JV. Skanska was the lowest bidder. An interview was conducted with Skanska to review their work class and staffing. The LIRR and Amtrak have approved Skanska's staffing plan. Although the M/WBE's participation for listed

subcontractors is 15 percent compared to the required 20 percent goal, meetings were held with the Compliance Officer from Skanska and they have provided a plan of how they're using good faith efforts to work towards reaching the 20 percent goal included in the contract. Mr. Gilchrist informed the Directors that the contract does include a provision for liquidated damages. He explained that Skanska has requested that the Corporation hold a job fair with M/WBE's to bring in additional M/WBE participation. Skanska plans to meet with the Corporation quarterly regarding M/WBE participation goals, even though the Project team will have a discussion with Skanska regarding M/WBE goal participation for each subcontractor they contract with. The Chairman of the USDOT office has offered its services to help with the outreach to the community.

Mr. Gilchrist further explained that the Project team has reviewed Skanska's staffing plan as well as, addressed their 2011 settlement with the US Attorney General Office and US DOT. He stated that MSDC, ESD Legal, PANYNJ and outside counsel Holland and Knight reviewed the prior agreement and certifications with US Attorney General Office, PANYNJ and the MTA and it has been determined by staff and legal counsel that they see no reason for these matters to prevent the Corporation from entering into a contract with Skanska. Mr. Gilchrist stated that an integrity monitor is currently being procured to ensure compliance with the M/WBE, DBE requirements.

Following Mr. Gilchrist's presentation of the item and comments from the Directors, upon motion duly made and seconded, the following resolution was unanimously adopted:

156. 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
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BE IT RESOLVED, that based on the materials presented at this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Skanska USA Civil Northeast Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the 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.

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Michael Evans presented the next Agenda item, requesting authorization to purchase an Owner's Interest General Liability policy for Phase 1 Moynihan Station Project. Mr. Evans explained that staff has instituted a Contractor Control Insurance Program ("CCIP") for Phase 1. The policy will be held by Skanska and will include MSDC, ESD, PANYNJ, Amtrak, LIRR and MTA as named insureds. He informed the Directors that on the advice of counsel and insurance advisors, in addition to the CCIP policy, MSDC researched Owner's Interest General Liability insurance for additional coverage that might not be covered by CCIP or where there

might be a gray area, i.e. accidents as a result of an MSDC employee venturing into a train shed or contractors work area; or work contracted by MSDC relating to Phase 1 which is not covered under the main contractor. He stated that Cool Insurance, the insuring agency broker, was asked to research three levels of coverage: \$2 million, \$5million and \$10 million. Cool provided quotes for all three levels. The results indicated that coverage for \$10 million worth of coverage were not significantly higher than quotes for \$2 million worth of coverage. Based on the results of comparative prices MSDC staff recommends the policy for \$10 million in coverage for 36 months. MSDC staff will come back to the Board for renewal of coverage at the end of the 36 months for authorization of the remainder of Phase 1 Project which is anticipated to be less than 36 months. Mr. Evans stated that it will cost the Corporation well under \$1 million for \$10 million dollars of coverage for the life of the Project.

Following Mr. Evans' presentation, Anita Romero requested that the names of the insurance companies be stated for the record. Mr. Evans responded that the policy for \$2 million of coverage is with Colony Insurance Company and \$5 million coverage with is Colony & Mt. Hawley and Axi.

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

157. 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

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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 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 to 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.

\* \* \*

Angel Martinez presented the next Agenda item, requesting authorization to amend the contracts for architectural, engineering, design and construction services. In his presentation Mr. Martinez mentioned, among other things, that the request is being made to amend the contracts with Skidmore, Owings and Merrill (“SOM”), the architect, PB Americas and SYSTRA Engineering. Mr. Martinez explained that SOM did not require further funding; PB Americas requires an additional \$230,000 and SYSTRA will require an additional \$430,000. He further explained that the construction phase services were negotiated to the end of the Project.

Following Mr. Martinez's presentation, Tukombo Shobowale asked if there were comps which compare to the raw construction costs. Mr. Martinez responded affirmatively. He stated that by pulling out the platform work of the second phase the design work as a percentage of the construction will be about 10 percent.

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

158. 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

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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 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.

\* \* \*

Chairman Porcari asked Tim Gilchrist to present the next Agenda item, requesting authorization for the Corporation to enter into a Construction License and Force Account Agreement with LIRR to support Phase 1 Moynihan Station Project. The Directors were given a revised resolution which expanded the resolution to include an LIRR easement.

In Mr. Gilchrist's presentation he stated that an agreement has been negotiated with the MTA parties to provide for the use of MTA funding for the Project's Phase 1, as well as, have the LIRR grant to the Corporation and the contractor a license to enter the LIRR premises to perform Phase 1 work, and create a Force Account Agreement for the costs of LIRR staff, reviewing, approving drawing and specifications as well as other work being performed in the LIRR premises. He explained that the proposed agreement is similar to the Amtrak Force Agreement in the obligation of the Corporation to perform the work in a safely manner. Also, the LIRR is the holder of the easement granted by the United States Postal Service to the LIRR for the original West End Concourse. In conclusion, Mr. Gilchrist requested that the Directors authorize the Corporation to enter into a Construction License and Force Account Agreement with the LIRR to include all necessary tasks associated with LIRR's required review and approval of drawing and specifications for the Phase 1 Project.

Following Mr. Gilchrist's presentation, upon motion duly made and seconded, the following resolution was unanimously adopted:

159. 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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Chairman Porcari requested that Mr. Gilchrist present the last Agenda item, requesting authorization for the Corporation to amend a contract for consulting services with the PANYNJ.

Mr. Gilchrist stated that previously, the Board had authorized the Corporation to enter into a consulting service agreement with the PANYNJ which covered engineering support and oversight of Phase 1 of the Project. The Board authorized the Corporation to enter into the consulting agreement for \$4.5 million for the duration of the Project. The agreement covered services for engineering staff, legal, real estate, and planning. Mr. Gilchrist stated that other

services have been provided by PANYNJ that are not covered in the agreement and which the Corporation is not paying for at this time. He explained that the Project staff has recently determined the requirement for material and special testing necessary for the Project. As a result, MSDC requested that the construction manager obtain prices from outside firms. PANYNJ conducted its own estimate of what it would cost PANYNJ to perform this work. It was determined that it would cost PANYNJ approximately \$900,000 compared to the results from outside firms of over \$1 million. The Project staff believes that authorizing the PANYNJ to perform this work would give the Corporation better quality control and would be more cost effective. In addition, a cost estimate is needed for the train hall as a stand-alone project. PANYNJ has agreed to provide an estimate for the plans for the train halls for \$37,500.

Chairman Porcari asked if it's clear that this cost estimate would be a planning level cost estimate. Mr. Gilchrist responded affirmatively.

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

160. 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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There being no additional business, the meeting was adjourned at approximately 1:55 p.m.

Respectfully submitted,

Regina Stephens  
Acting Corporate Secretary

## **Moynihan Station Development Corporation**

### **FOR CONSIDERATION**

June 27, 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 Contract for Architectural, Engineering and Design Services with PB Americas, Inc.; and Authorization to Take Related Actions

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### **BACKGROUND**

Approval is sought to amend the contract with PB Americas, Inc. (“PB”) to cover design services associated with the relocation of the Amtrak section switches.

During the design phase in 2011, it was determined that the new balconies on the West End Concourse would limit the ability of Amtrak to maintain the section switches adjacent to the new West End Concourse. The project team and Amtrak investigated several options for maintaining the sectionalizing switches, and MSDC budgeted \$500,000 for the purchase of new maintenance equipment for Amtrak to service the switches. Amtrak then requested that MSDC instead spend the \$500,000 towards the design and relocation of the section switches. Amtrak would then relocate the switches and cover costs above the \$500,000.

PB will provide one or two fully designed, constructible structural platform(s) on which the relocated switches will be placed on the south side of the train shed. In addition Amtrak has requested a conceptual design for the relocation of the section switches be developed as a basis for the full design. Amtrak has agreed to fully design the relocated section switches. PB will provide a conceptual design for the section switch relocation as part of this amendment using a sub-consultant, The Burns Group. The estimated cost for this effort is \$190,000, which includes a \$10,000 allowance for Structural work by Severud, and \$131,200 for The Burns Group. The estimated schedule to complete the design is 6 month. A 10% contingency is recommended for a total of \$209,000.

In April 2010, the Directors authorized Moynihan Station Development Corporation (“MSDC”) to enter into a separate contract with PB Americas, Inc. (“PB”) for architectural and engineering services on Phase 1 of the Moynihan Station Project. In May 2012, the Directors authorized MSDC to amend the contract with PB for an amount of \$323,500 for construction phase

services, to respond to the various Amtrak requests and to re-package the Phase 1 bid documents.

**PROPOSED CONTRACT AMENDMENT**

It is requested that authorization be provided to amend PB’s existing contract by a total of \$209,000 for a new total contract amount not to exceed \$2,332,500 inclusive of contingency.

**SUMMARY**

Based on the foregoing, MSDC, in close coordination with PANYNJ, seeks to amend the contract with PB so as to provide a conceptual design for the Amtrak section switch relocation and a fully constructible design for the structural platform on which the relocated switches will rest.

<b>Consultant</b>	<b>Previously Authorized Contract*</b>	<b>Additional Design Services</b>	<b>Amended Contract Total</b>
<b>PB</b>	\$2,123,500	\$209,000	<b>\$2,332,500</b>

*\* Includes previously authorized contingencies.*

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.

**FUNDING**

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

**AFFIRMATIVE ACTION**

MSDC’s DBE/MBE/WBE Program Plan will apply to these contracts. PB will be encouraged to use their best efforts to achieve a Minority Business Enterprise participation goal of 15% and a

Women Business Enterprise participation goal of 5% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the 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 this contract 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 ACTION**

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

**RECOMMENDATION**

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

**ATTACHMENTS**

Resolution

June 27, 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 PB Americas, Inc.; and Authorization to Take Related Actions

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

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the existing contract with PB and increase the amount of such contract by \$209,000 to a new aggregate limit of \$2,332,500, for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that 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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## Moynihan Station Development Corporation

### **FOR CONSIDERATION**

June 27, 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 Enter into a Contract for Integrity Monitor Services related to Phase 1 Moynihan Station; Authorization to Take Related Actions

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### **BACKGROUND**

The use of an Integrity Monitor on a project as large and complex as the Phase 1 Moynihan Station project will provide Moynihan Station Development Corporation Board, and our funding partners of USDOT/FRA, MTA and PANYNJ with additional oversight of the contractor and the Construction Manager particularly in the areas of fraud, corruption and abuse. The RFP for Integrity Monitoring Services was publicly advertised in the New York State Contract Reporter on December 16, 2011 and included the following tasks:

**TASK 1: Conduct a review of all existing procedures and processes for vulnerability to fraud, corruption, cost abuse, safety, and/or environmental risks.** At the outset, the IM shall obtain information on all entities performing on the Project. The IM shall review and analyze the risks inherent in construction, construction, and post-construction procedures, including but not limited to the procurement process, invoice procedures, and the environmental and safety compliance programs. The IM shall also review and understand all contracts, union and trade agreements as necessary.

**TASK 2: Design and implement corruption prevention programs.** Based on its findings from Task 1, the IM shall recommend and assist in implementing procedures designed to mitigate all risks identified in its initial review. The IM shall provide ongoing audit and investigative services as necessary, to include, but not be limited to, establishing and maintaining a Fraud Prevention Hotline, conducting site inspections of work, inspections of the make up and use of labor, compliance with collective bargaining agreements and DBE/MBE/WBE requirements (as applicable), compliance with state

and federal labor laws, review and monitoring of worker safety plans and procedures, and compliance audits of waste disposal facilities and transports.

**TASK 3: Budget review and monitoring.** The IM shall periodically review the budgets of the Construction Manager and the Contractor, including specific budgetary amounts allocated for each trade, general condition and contingency costs, and any changes in scope, holds, contingency, allowances, change orders, or other miscellaneous additions or credits.

**TASK 4: Records review and compliance.** The IM shall periodically review the records of the Construction Manager and the Contractor, with specific attention to documentation and records keeping related to the bidding process, change order payment applications, insurance certifications, and environmental and safety records.

**TASK 5: Forensic review and oversight.** The IM shall conduct forensic reviews of project cost, including the analysis of requisitions and supporting documentation, payments, change-orders, change-order requisitions and supporting documentation, payments to vendors, equipment invoices, bond payment reconciliation, certified payroll reports, site logs, trucking manifests, etc.

**TASK 6: Forensic auditing and investigations.** The IM shall provide ongoing forensic auditing and investigative services, as necessary and directed by the MSDC President and the PANYNJ Program Director, to include, but not be limited to: background investigations on contractors, suppliers, consultants; conducting field investigations and on-site monitoring of construction work; investigating and evaluating construction contractor use of the labor, compliance with collective bargaining agreements, and compliance with state and federal labor laws; review and monitoring of worker safety and environmental plans and procedures; compliance with DBE/MBE/WBE requirements and goals; and conducting investigations into illegal conduct by MSDC contractor staff, and others. The IM shall provide written reports of its audits and/or investigations, and may be called upon to meet with law enforcement officials as appropriate. The IM shall also provide a post-construction review to include a forensic audit of all Federal-funded costs.

**TASK 7: Quality Management Plan oversight.** The IM shall audit the Construction Manager and the Contractor to assure construction is being performed in conformance with procedures outlined in the Contract documentation and the Quality Assurance/Quality Control ("QA/QC") Plan. The IM shall be responsible for overseeing the implementation and Management of the Quality Management Plans ("QMPs") for the Contractor and their respective subcontractors, vendors and suppliers. The IM shall provide oversight of the implementation and maintenance of the quality elements presented in the various QMP submittals and coordinate with the Engineer of Construction to assure that the other quality control management systems are maintained, up-to date, and effective. The IM shall conduct audits of quality programs

for adequacy and compliance with performance requirements as well as oversee corrective actions to ensure the elimination of problems that may arise from non-conforming procedures and prevent recurrences. The IM shall confirm through scheduled audits, that preventive action procedures are in place to mitigate potential problems and shall review the documented quality policy to verify that it is understood, implemented and maintained throughout the program organization.

Three (3) firms submitted proposals: Hill International, Inc. (“Hill”); Navigant Consulting Inc. (“Navigant”); and Thacher Associates, LLC (“Thacher”).

Each of the proposals were subsequently reviewed and evaluated by a Selection Committee composed of staff from MSDC, ESDC and PANYNJ as follows:

<b>Committee Member</b>	<b>Title, Department, Organization</b>	<b>Voting Member?</b>
Thomas Brennan	Senior Vice President, Internal Audit, ESDC	Yes
Helen Daniels	Director, Affirmative Action, ESDC	Yes
Carlos Otero	Vice President, Contract Administration, ESDC	Yes
Steven Pasichow	Assistant Inspector General, PANYNJ	Yes
Mehul J. Patel	Vice President, Development, MSDC	Yes
Richard Dorado	Senior Counsel, Legal Department, ESDC	No
Robert Joyce	Supervising Police Investigator, PANYNJ	No
Renzo Sosa	Manager, Procurement, ESDC	No

The Selection Committee held an initial meeting to discuss the technical proposals and provide preliminary technical scores based on the following weighted criteria as defined in the RFP:

- A. Depth and Quality of Firm Experience (50%)
- B. Proposed Technical Approach (30%)
- C. Proposed Management Approach (20%)

After completion of the initial technical evaluation, the separately sealed pricing and compensation proposals from all three (3) firms were opened at ESDC’s offices on March 15, 2012.

The Selection Committee reviewed the pricing proposals and subsequently interviewed each of the three (3) firms on March 27, 2012.

After further discussion about each firm’s proposal, qualifications, experience and interview, the Selection Committee finalized their technical scores and ranked them from highest to lowest as follows:

1. Thacher Associates, LLC
2. Navigant Consulting, Inc.
3. Hill International, Inc.

Based on the evaluation criteria in the RFP (which did not include cost) and the final scoring matrix, the Selection Committee unanimously agreed that Thacher, with a total technical score of 4.82, was the highest rated firm.

However, since the pricing and compensation proposals significantly exceeded both the initial independent estimate prepared by PANYNJ and the previously allocated budget for Integrity Monitoring Services, MSDC requested that all three (3) firms revise their pricing and compensation proposals to reflect a reduced scope in accordance with the recent decision to stage the implementation of Phase 1 of the Moynihan Station Project. MSDC also requested that all three (3) firms provide two (2) separate price proposals:

- (1) a price which includes performance of all seven (7) Tasks described in the Scope of Services of the original RFP, and
- (2) a price which excludes Task 3 (Budget Review and Monitoring) and Task 7 (Quality Management Plan Oversight).

The three (3) firms submitted sealed revised pricing and compensation proposals on May 30<sup>th</sup> and the bid opening took place at ESDC’s offices that afternoon:

<b>Firm</b>	<b>Price Including All Tasks</b>	<b>Price Excluding Tasks 3 &amp; 7</b>
Thacher Associates, LLC	\$2,406,034	\$1,908,413
Hill International, Inc.	\$1,826,797	\$1,357,464
Navigant Consulting, Inc.	\$4,083,263	\$3,361,013

NOTE: MSDC, ESD and PA Staff believe the preferable alternative above is “Price Excluding Tasks 3 & 7.” Excluding those tasks would minimize the overall Integrity Monitor fee; it is their view that Tasks 3 and 7 (Budget Review and Monitoring, and Quality Management Plan Oversight) can effectively be addressed by in-house MSDC, ESDC and Port Authority staff, and hence can be excluded from this estimate.

The Selection Committee reconvened on June 1<sup>st</sup> to discuss the revised pricing and compensation proposals and subsequently reviewed the staffing, rates and hours allocated to each task.

*As stated in the original RFP, the “Award will be made to the responsible firm whose Proposal is most advantageous to MSDC. In determining which Proposal is most advantageous, MSDC will evaluate Proposals to determine which Proposal offers the greatest business value to MSDC based upon an analysis of the qualitative technical*

*factors and price/cost in order to derive which Proposal represents the “best value” to MSDC.”*

Based on their review, it is the opinion of the Selection Committee that the proposal from Thacher Associates, LLC conforms to the requirements as described in the RFP, and is judged to represent the best value for the MSDC.

While Hills’s bid excluding Tasks 3 and 7 is \$551,000 (29%) lower than Thacher’s bid, it was the Selection Committee’s consensus that the strength of Thacher’s technical skills as an integrity monitor significantly outweighed the extra projected cost of the Thacher proposal vs. the Hill proposal. Also, the Hill proposal called for a disproportionately high level of work to be done by its subcontractors as compared to Thacher; this weighed heavily in Thacher’s favor.

MSDC and PA staff will conduct an efficiency review with Thacher of its proposed operations and procedures in order to achieve further Integrity Monitor cost savings.

It should be noted that the \$1,908,413 Thacher bid, excluding Tasks 3 and 7, and prior to any further reductions through efficiency review, represents 1.15% of the combined contractual cost of the \$147.7 million construction contract to Skanska USA for the West End Concourse project and the \$18,900,000 current estimate for the CM services.

Thacher Associates, LLC’s bids also anticipate usage of three MWBE subcontractors representing a total of 28.6% of its bid amount (excluding tasks 3 and 7), which exceeds the Governor’s 20% MWBE target for government contracts.

## **FUNDING**

The contract will be funded at 100% with federal funds from the Appropriations grant as part of the approved Phase 1 budget. It is included in the program management category.

## **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 Thatcher Associates, LLC to be responsible.

### **AFFIRMATIVE ACTION**

MSDC's DBE/MBE/WBE Program Plan will apply to this contract. Thacher 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. As stated above the Thatcher proposal includes a participation rate of 28.6%.

### **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 ACTION**

The Directors are requested to authorize the Corporation to enter into a contract with Thacher Associates, LLC in an amount not to exceed \$2,099,000 (\$1,908,413 plus contingency) for a period of five years.

### **RECOMMENDATION**

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

### **ATTACHMENTS**

Resolution

June 27, 2012

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Award an Integrity Monitor Contract to Thacher Associates LLC; 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 Thacher Associates LLC. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a contract for Integrity Monitoring Services up to the amount of one million nine hundred eight thousand four hundred and thirteen dollars (\$1,908,413) and an approximate 10% contingency (totaling an amount not to exceed \$2,099,000) for a term not to exceed five (5) years substantially on the terms and conditions, as set forth in the Materials; and be it further

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

\* \* \*

## Moynihan Station Development Corporation

### **FOR CONSIDERATION**

June 27, 2012

**TO:** The Directors

**FROM:** Tim Gilchrist

**SUBJECT:** Replace the Original Steel Water Tank at the James A. Farley Post Office Annex Building

**REQUEST FOR:** Authorization to Enter into a Contract with Rosenwach Tank Co., LLC, to Replace and Maintain a Steel Water Tank

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### **Contract Summary**

Contractor:	Rosenwach Tank, Co., LLC, Long Island City, NY 11101
Scope of Services:	Design and replace the original steel water tank and maintain and clean the replacement tank for four additional years.
Contract Term:	5 Years
Contract Amount:	Not to exceed \$700,000
Funding Source:	Farley Remediation Account

### **Background**

The existing three compartment steel water storage tank located at the James A. Farley Post Office Annex building is an essential component of the building's fire suppression system and domestic water reserve. The tank is located in the enclosed roof level tank room supported on an elevated steel platform and was originally constructed from steel wall plates reinforced with steel angles riveted and welded to the tank walls. Approximately 80 years old, X-ray testing has revealed extensive tank wall corrosion primarily due to lack of preventative maintenance and cleaning. It has been determined that corrosion and subsequent wall section thinning has allowed a condition for a potential rupture and subsequent flooding of the Farley Annex building below. The tank has exceeded its life expectancy and requires replacement.

### **Contractor Selection Process**

On April 13, 2012, the New York State Contract Reporter published a solicitation requesting qualifications and proposals from water tank contractors. Three known New York City based firms specializing in water tank construction along with two mechanical contractors responded and attended a mandatory site visit and walk through held on

April 19, 2012. Three firms submitted comprehensive proposals including lead paint abatement, removal and replacement of the tank. The solicitation additionally requested tank maintenance and cleaning for an additional four years commencing one year after the tank replacement and concluding in 2016.

The following three (3) contractors submitted their proposals and ranked as follows:

Rosenwach Tank, Co. LLC	\$630,000.00
Crescent Contracting Corp.	\$729,000.00
American Pipe & Tank Lining Co., Inc.	\$857,500.00

Upon review and verification of references, Rosenwach Tank Co, LLC, the apparent low bidder, is recommended as they offer the least expensive proposal and had the best value. Rosenwach Tank Co, LLC, based in Long Island City, Queens specializes in water tank construction, reports annual company revenue of approximately \$8,000,000 and has been in business over 150 years.

**Scope of Work**

To contract with Rosenwach Tank, Co. LLC to design and construct a 24,000 gallon replacement three compartment steel water tank meeting all NYC and NYS code requirements. The contractor shall hire a licensed Professional Engineer to design the replacement of the existing three compartment tank, valves, piping, controls, and other components for a complete installation. Additional work scope includes necessary lead paint abatement prior to demolition, tank demolition and removal, replacement of steel support beams and replacement of the existing steel drip pan directly under the tank. The tank will be replaced in stages with one compartment in operation at all times and at no time will the building’s fire suppression system be compromised.

**Contract Term, Price and Funding**

- The proposed term of the contract is five (5) years.
- This contract will be funded through the Farley Remediation Account.

**Non-Discrimination/Affirmative Action**

ESDC’s non-discrimination and affirmative action policies will apply to this contract. Rosenwach will be required to use their best efforts to achieve a Minority Business Enterprise participation goal of 16% and a Women Business Enterprise participation goal of 12% 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 28%.

### **Environmental Review**

ESD staff has determined that the authorization of this contract to remove and replace the existing 24,000 gallon steel water tank with a new steel water tank of similar material, capacity and dimensions does not constitute an 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 in connection with the authorization.

### **Requested Action**

The Directors are requested to approve the entry into a contract with Rosenwach Tank, Co. LLC for up to five (5) years including tank demolition/construction costs, demolition/construction contingency, 10 % lead paint abatement contingency and four additional yearly cleanings with a not to exceed price of seven hundred thousand hundred dollars (\$700,000).

### **Recommendation**

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

### **Attachments**

Resolution

June 27, 2012

MOYNIHAN STATION DEVELOPMENT CORPORATION – Authorization to Enter into a Contract with Rosenwach Tank Co., LLC to Demolish and Replace the Steel Water Storage Tank and Other Necessary Work; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Rosenwach Tank Co., LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Rosenwach Tank Co. LLC in an amount of six hundred thirty thousand dollars (\$630,000) and an approximate 10% contingency (totaling an amount not to exceed \$700,000) for a term not to exceed five (5) years for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee 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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