

FOR CONSIDERATION

April 15, 2010

TO: The Directors

FROM: Dennis M. Mullen

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

REQUEST FOR: Authorization to Enter into Contract for Real Estate and Related Legal Services; Authorization to Take Related Actions

CONTRACT SUMMARY

Counsel: Holland & Knight LLP

Scope of Services: Holland & Knight LLP would provide Empire State Development Corporation (“ESDC”) and its subsidiary Moynihan Station Development Corporation (“MSDC”) with real estate, construction, financing, development, land use, and related legal services in connection with the Moynihan Station Project, including but not limited to preparation of legal documents relating to design, finance, construction, and the creation of property interests necessary to complete Phase 1 of the Moynihan Station Project at the James A. Farley Post Office Building (“Farley”).

Contract Amount: Not to Exceed \$750,000.

BACKGROUND

For the past year, ESDC and MSDC, in close coordination with the Governor’s Office and the Port Authority of New York and New Jersey (“Port Authority”), have worked diligently to re-focus the Moynihan Station Project on increasing train and passenger capacity at Penn, improving overall life safety conditions within the complex, creating an iconic new inter-city train hall which also will serve commuters, and redeveloping the remainder of Farley for commercial purposes that will support costs for the new Moynihan Station.

Such revised Project will require complicated legal documentation with multiple parties with varying interests, including but not limited to: United States Postal Service; Federal Railroad Administration; National Passenger Railroad Corporation (Amtrak); Metropolitan Transit Authority (including Long Island Railroad and NYC Transit); New Jersey Transit; and the Port Authority. Accordingly, staff recommends the retention of real estate counsel to assist in these matters.

SELECTION OF COUNSEL

ESDC, for itself and on behalf of its subsidiaries, pre-qualified counsel in selected areas of expertise, including 13 New York law firms specializing in the areas of real estate, land use, and related litigation, making them available for legal work on an as-needed basis, after approval of individual retention contracts, without need for further public solicitation. This action was

taken to permit ESDC and its subsidiaries to respond to project needs expeditiously, while having available the benefits of a broad solicitation of qualified outside law firms.

Staff invited five of the pre-qualified real estate firms to interview for the necessary Moynihan services. One of the five declined, and the remaining four (Katten Muchin; Shearman & Sterling; Skadden Arps; and Holland & Knight) were interviewed by staff from ESDC, MSDC, and the Port Authority.

Staff recommends the retention of Holland & Knight (“H&K”) based on: (a) the four interviews and subsequent follow-up; (b) knowledge of the expertise and staffing of the firms; (c) rate structure; and (d) prior ESDC work performed by the firms. H&K is a full-service firm with extensive experience in complicated real estate and governmental transactions. H&K’s New York Real Estate and Construction practice consists of eighteen lawyers experienced in design, development, financing, and construction matters. Lawrence Wolk, who would be the Project’s principal real estate partner, has represented Roosevelt Island Development Corporation and the New York State Power Authority in sophisticated, multi-party, real estate transactions. Frederick Rohn, who would be the Project’s principal construction partner, has extensive experience in public and private construction projects, including representing transit agencies in connection with transit facilities. They will use firm attorneys and staff as appropriate to perform the services. In addition, H&K has expertise in Federal Historic Tax credits, procurement of federal funding, and development of public transportation facilities. H&K has satisfactorily performed legal services for ESDC projects in the past and has the expertise and the staff to accomplish the work required to advance the Moynihan Project.

CONTRACT PRICE AND FUNDING

Compensation under the contract will not exceed \$750,000, payable against invoices for time and disbursements. H&K will bill ESDC at a discount from its standard rates, and for 2010 will bill in accordance with ESDC’s “Maximum Rate Structure for Outside Counsel”:

Partner/Of Counsel	\$400/hr
Senior Associate (5th year and up)	\$375/hr
Mid-level Associate (3rd through 4th year)	\$350/hr
Junior Associate (first year, after bar exam is passed through 2nd year)	\$300/hr
Law Clerk (law student interns and first year associates until bar exam is passed)	\$220/hr
Legal Assistants	\$90/hr

Beginning January 1, 2011, rates would increase by 5%, except that “Partner/Of Counsel” rate would be \$450/hr and “Legal Assistants” maximum rate would be \$135/hr. Beginning January 1, 2012 through December 31, 2014, maximum hourly rates would increase by 5% per annum (so that, for 2014, maximum “Partner/Of Counsel rate would be \$521/hr). All costs for real estate and related legal services under this contract are expected to be funded initially with Port Authority of New York and New Jersey funds which will be reimbursed by Moynihan Station’s current public Federal and State funding sources.

RESPONSIBLE PARTY

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

AFFIRMATIVE ACTION

ESDC's Non-Discrimination and Affirmative Action policy will apply to this contract. There is a 20% Minority/Women-owned Business Enterprise contractor and/or subcontractor participation goal during the development of the Moynihan Project, and an overall goal of 25% minority and female workforce participation during construction.

REQUESTED ACTION

The Directors are requested to authorize the Corporation to contract with Holland & Knight for legal services, on the terms and conditions as described above.

RECOMMENDATION

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

ATTACHMENTS

Resolutions

April 15, 2010

New York (New York County) – Moynihan Station Civic and Land Use Improvement
Project -- Authorization to Enter into Contract for Real Estate and Related Legal
Services; Authorization 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 Holland & Knight (“Counsel”) to be responsible; and be it further

RESOLVED, that the Corporation be, and hereby is, authorized to enter into a contract with Counsel in an amount not to exceed \$750,000, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the Chief Executive Officer - Designate or another Officer of the Corporation, or their designee(s), be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and to take all actions as may be necessary or proper to implement the foregoing resolutions.

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