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

August 20, 2012

MINUTES

In Attendance
Directors: Timothy J. Gilchrist
Karen Hedlund - Acting Chair (via video conference)
Anita Romero
Vincent White (Designee for John Porcari) (via video conference)

Present for the Empire
State Development Corporation:
Thomas Brennan, Senior Vice President
Justin Ginsburgh, Chief of Staff
Howard Kramer, Asst. Vice President – Internal Audit
Natasha Pallan, Director – Subsidiary Finance
Sankar Singh, Manager – Contract Audit & Admin.

Present for the
Moynihan Station Development Corporation: Fred Bartoli, Project Manager
Deborah Royce, Acting Corporate Secretary

Also Attending: Angel Martinez, PANY&NJ
The meeting of the Moynihan Station Development Corporation ("MSDC" or the "Corporation") was called to order at approximately 1:00 p.m. by Acting Chair Karen Hedlund. 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 Acting Chair briefly reviewed the protocol for comments.

The first order of business was approval of the Minutes of the June 27, 2012 Directors’ meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:


RESOLVED, that the Minutes of the meeting of the Corporation held on June 27, 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.

* * *

Timothy Gilchrist presented the next Agenda item, requesting authorization to amend project specific Professional Liability Insurance Policy. Mr. Gilchrist explained to the Directors that previously the board had approved project specific liability insurance for the design professionals at the recommendation of the MSDC’s insurance advisors. The policy provided $20,000,000 in professional liability insurance for all of MSDC’s professional firms: SOM,
SYSTRA, PB, PANY&NJ, and STA JV, the construction manager. The policy covered professional fees worth $17,600,000 at a premium rate of $15.68 per $100 of professional fees. Subsequent to that first approval MSDC has added insurance requirements for the construction manager, in addition to the construction phase and change orders for other design professionals. He stated that the cumulative fees have since increased from $17,600,000 to over $50,000,000 which prompted Cool, MSDC’s insurance agent, to renegotiate with Chartis a substantially lower rate of $9.00 (per $100 of professional fees) for the entire policy for an additional payment of $383,715. Mr. Gilchrist informed the Directors that the policy will continue to provide coverage for 10 years, and Amtrak, PANY&NJ, MTA and the LIRR are all named as insureds.

Following the presentation of the item, upon motion duly made and seconded, the following resolution was unanimously adopted:

167. NEW YORK CITY (New York COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Project Specific Professional Liability Insurance Policy; 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 Lexington Insurance Company to be responsible; and be it further

RESOLVED, that the Corporation is authorized to (i) amend the project specific professional liability insurance policy for the Project in order to provide coverage for SOM, PB, SYSTRA, STA JV, and PANYNJ as named insureds on such policy and (ii) pay an additional amount not to exceed $383,715 with respect to the cost of such insurance coverage; 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.

* * *

Acting Chair Hedlund requested that Mr. Gilchrist continue with the next Agenda item, requesting authorization for the Corporation to among other things, apply for and accept funding agreements with certain governmental entities.

Mr. Gilchrist stated that the Moynihan Station Project is not fully funded for Phase 1, and he has been unsuccessfully working to identify potential sources of funding. However, often times funding from various agencies become available at the end of an agency’s fiscal year and in order to take advantage of such funding opportunities MSDC must be in a position to act quickly. Mr. Gilchrist explained that authorization is being requested for MSDC to apply for and accept grants from Federal agencies, the PANY&NJ, New York State agencies and authorities and New York City agencies, authorities and its affiliates for additional funding of Moynihan Phase 1 Project. Mr. Gilchrist further explained that the approval to apply and accept these grants does not provide authorization for MSDC to enter into loan agreements, but would allow MSDC to enter into grants that are substantially on the same terms as all of the existing grants that have been entered into by MSDC. He stated that the Directors would certainly be notified of any grant awards and the Corporation would obtain the necessary board approvals for any transaction requiring such approval.
Following the presentation, Anita Romero asked Mr. Gilchrist to clarify that the resolution would be with respect to Phase 1 only. Mr. Gilchrist responded yes it would be, although it is not stated in the resolution that it’s for Phase 1 only. He suggested that it be reflected in the Minutes that the Directors’ authorization is for Phase 1 only. Ms. Romero stated that it would be helpful if the Minutes reflect that the Directors’ are authorizing the Corporation to apply for funding and enter into funding agreements with governmental entities only for Phase 1 of the Moynihan Station Project. Ms. Romero also asked Mr. Gilchrist to clarify that if a grant or grants are awarded MSDC would come back to the board prior to seeking authorization to actually spend the money. Mr. Gilchrist responded affirmatively.

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

168. MOYNIHAN STATION DEVELOPMENT CORPORATION - NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Apply for Funding and Enter into Funding Agreements with Governmental Entities

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 be authorized to enter into funding agreements with Federal agencies; The Port Authority of New York and New Jersey; New York State agencies and authorities; and New York City agencies, authorities and affiliates; 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 enter into such amendments and modifications of such agreements as each such authorized person may deem it to be beneficial to the Corporation; 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.

* * *

Next, Mr. Gilchrist presented his President’s Report. Mr. Gilchrist reported that in addition to MSDC staff at the Farley Building, the PANY&NJ staff, the construction manager’s staff and Skanska staff have moved into the building as well. Mr. Gilchrist then asked Angel Martinez of the Port Authority to give his status report.

In his report Mr. Martinez discussed among other things, the Project’s prep work and surveying being conducted on the platform. He stated that the contractor has procured the equipment required to move materials to storage. Mr. Martinez stated that a plan for outages has been submitted for review. He informed the Directors that a revised construction schedule has been submitted and is under review; and that weekly meetings have been scheduled with the contractors to insure all things are in place to proceed as scheduled.

Following Mr. Martinez’s report, Acting Chair Hedlund asked if there is public information outreach going on with respect to the work being undertaken. Mr. Gilchrist responded that Skanska is meeting with local businesses in the area which gives Skanska an opportunity to patronize the local businesses, as well as, provide the businesses with general information regarding the Project work. He stated that he plans to meet with the Community Boards and the 34th Street Partnership as soon as specific dates have been established to
provide them with information regarding the Project work. Mr. Gilchrist stated that MSDC has had discussions with the railroads with respect to handling announcements regarding the Project work and service disruptions in accordance with Amtrak’s policy. He explained that finalization of information on MSDC’s website is required so that there is a connection to whatever signage is placed on the platforms. Mr. Gilchrist stated that they are still in the process of determining how information will be provided to the public, whether to provide information in signage on the platforms, which would impede the flow of pedestrians as they stop to read the signs, or to provide information in leaflet handouts. Lastly, Mr. Gilchrist stated that once the flatcars are on the site and have passed required inspections, and specific work plans have been approved, MSDC will be able to provide a more realistic schedule to the Directors and the public.

Following Mr. Gilchrist’s President’s report, he took a few moments to recognize and say farewell to Natasha Pallan, ESD’s Director of Subsidiary Finance. He informed the Directors that Ms. Pallan would be leaving ESD to take a position at a Charter School as the CFO. Mr. Gilchrist thanked Ms. Pallan for being instrumental in handling the insurance process for MSDC. Ms. Pallan thanked Mr. Gilchrist for his kind words and expressed her appreciation for an opportunity to help facilitate and take part in the progress of the Project as it moves into the construction phase.
Following Ms. Pallan's remarks, Acting Chair Hedlund entertained a motion to conduct an Executive Session, pursuant to paragraph (h) 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:

169. EXECUTIVE SESSION - Pursuant to Paragraph (h) of the Subdivision 1 Section 105 of the New York State Open Meetings Law

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

* * *

The Directors' meeting was temporarily adjourned at 1:18 p.m. to conduct an Executive Session. All persons were requested to leave the room with the exception of the Directors and members of senior staff.

The Executive Session concluded at 1:34 p.m. Once the meeting was back in Open Session, Acting Chair Hedlund noted for the record that no votes were taken during the Executive Session.

There being no additional business, the meeting was adjourned at approximately 1:35 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary
FOR CONSIDERATION  
October 12, 2012

TO: The Directors

FROM: Timothy 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.; Authorization to Amend the Project Specific Professional Liability Insurance Policy; and Authorization to Take Related Actions

1. BACKGROUND

In April 2010, the Directors authorized 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.

After the plans for Phase 1 were completed and initial bids were received, it was necessary to stage the implementation of Phase 1 due to the funding available at the time. With the concurrence of USDOT, FRA, Amtrak, MTA, LIRR, NJ Transit, and FDNY, Phase 1 was separated into three sub-projects:

1. West End Concourse Expansion
2. Platform Ventilation System
3. 33rd Street Connector

In May 2012, the Directors awarded the construction contract for the West End Concourse Expansion (“WEC”) to Skanska USA Civil Northeast, Inc. (“Skanska”) and authorized amendments to the SOM, PB, and SYSTRA contracts for design and construction phase services associated with that initial sub-project of Phase 1.

In September 2012, USDOT awarded a $30 million grant to NYSDOT/MSDC for the additional Phase 1 sub-projects. While this additional funding does not fully fund the remainder of Phase 1, the funding is sufficient to a) complete the 33rd Street Connector sub-project, and b) complete the structural work in the Penn Station train shed associated with the Platform Ventilation System in ‘C’ Yard. In addition, there may be sufficient funds in existing grants to...
complete the structural work in the Penn Station train shed associated with the Platform Ventilation System in ‘E’ Yard.

Therefore, approval is sought for the following actions:

1) Amend SOM’s contract to re-package the 33rd Street Connector plans and specifications into a standalone bid package and to provide necessary construction phase services during construction as the Architect of Record.

2) Amend PB and SYSTRA’s contract to re-package the Platform Ventilation System plans and specifications so the necessary structural work can proceed in ‘C’ and ‘E’ Yards of the Penn Station Train Shed and to provide necessary construction phase services during construction as the Engineer of Record.

3) Amend the project specific professional liability insurance policy (“PPL”) to reflect this increase in professional fees.

2. PROPOSED CONTRACT AMENDMENTS

SOM
Re-packaging the plans for the 33rd Street Connector as a stand-alone bid package will enable this sub-project to be bid out to a broad set of contractors. For SOM and their subconsultants this work includes modifying structural, mechanical and electrical systems based on separating the 33rd Street Connecting Corridor; revising staging drawings to account for the adjusted scope; and providing necessary support during the bidding process.

The fees for this re-packaging effort total $225,000 and the associated construction phase services are $380,000. Staff recommends a 10% contingency of $60,500.

Therefore, authorization is requested to amend the SOM contract by a total of $665,500, for a new total contract amount not to exceed $13,529,930, inclusive of contingency.

PB
With the available funding at this time, construction of the structural elements of the platform ventilation fan rooms and the associated electrical substation room will take advantage of the removal of catenary associated with the WEC sub-project and the previously negotiated extended outages in ‘C’ and ‘E’ Yard. For PB and their subconsultants this work includes removing the mechanical, electrical and plumbing systems from the existing plans; revising staging drawings to account for the adjusted scope; and providing necessary support during the contractor negotiation process.

The fees for this re-packaging effort total $80,000 and the associated construction phase services are $1,070,000. Staff recommends a 10% contingency of $115,000.

Therefore, authorization is requested to amend the PB contract by a total of $1,265,000, for a new total contract amount not to exceed $3,597,500, inclusive of contingency.
SYSTRA
Modifications to the electric traction power and overhead catenary systems will be necessary to accommodate the construction of the Platform Ventilation System structures including the PS-18 switch platform. For SYSTRA and their subconsultants this work will include modifying rail return cables and overhead catenary systems; revising staging drawings to account for the adjusted scope; and providing necessary support during the bidding process. In addition, at the request of Amtrak, SYSTRA will also complete the design of a new pull-box at a different location than previously planned.

The fees for this re-packaging effort total $346,000 and the associated construction phase services are $104,000. Staff recommends a 10% contingency of $45,000.

Therefore, authorization is requested to amend the SYSTRA contract by a total of $495,000, for a new total contract amount not to exceed $4,221,000, inclusive of contingency.

3. SUMMARY

Based on the foregoing, approval is requested to amend the contracts with SOM, PB and SYSTRA as follows:

<table>
<thead>
<tr>
<th>Consultant</th>
<th>Previously Authorized Contract*</th>
<th>Additional Services</th>
<th>Contingency (10%)</th>
<th>Amended Contract Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOM</td>
<td>$12,864,430</td>
<td>$605,000</td>
<td>$60,500</td>
<td>$13,529,930</td>
</tr>
<tr>
<td>PB</td>
<td>$2,332,500</td>
<td>$1,150,000</td>
<td>$115,000</td>
<td>$3,597,500</td>
</tr>
<tr>
<td>SYSTRA</td>
<td>$3,726,000</td>
<td>$450,000</td>
<td>$45,000</td>
<td>$4,221,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$18,922,930</td>
<td>$2,205,000</td>
<td>$220,500</td>
<td>$21,348,430</td>
</tr>
</tbody>
</table>

* Includes previously authorized contingencies.

These additional fees totaling $2,425,500 will require an additional premium for the project specific professional liability insurance policy ("PPL") which the Directors authorized the purchase of in January 2011 and subsequently amended in September 2011 and August 2012.

With these additional professional services fees, the premium rate for the PPL has been further reduced to $8.731 (per $100 of professional fees) for the entire policy and payment of $29,845, inclusive of taxes and fees, will be due to fully fund the associated insurance premium.

Contract Reporter Exemptions have been sought for all three of these contract amendments.
4. **FUNDING**

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

5. **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.

6. **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.

7. **ENVIRONMENTAL REVIEW**

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

8. **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 construction phase services, as set forth in these materials. The Directors are also requested to authorize the Corporation to
amend the project specific professional liability insurance policy for the Project as set forth in these materials.

9. **RECOMMENDATION**

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

10. **ATTACHMENTS**
Resolution
NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contracts for Architectural, Engineering, Design, and Construction Phase Services with: (a) Skidmore, Owings & Merrill LLP; (b) PB Americas, Inc.; and (c) SYSTRA Engineering, Inc.; Authorization to Amend the Project Specific Professional Liability Insurance Policy; 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 $665,500 to a new aggregate limit of $13,529,930, 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 $1,265,000 to a new aggregate limit of $3,597,500, 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 $495,000 to a new aggregate limit of $4,221,000, for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the project specific professional liability insurance policy for the Project and pay an additional amount not to exceed $29,845 with respect to the cost of such insurance coverage; 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.

* * *
FOR CONSIDERATION
October 12, 2012

TO: The Directors

FROM: Timothy Gilchrist

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

REQUEST FOR: Authorization to Amend Contract with Jerome Haims Realty, Inc. for Valuation Services; and Authorization to Take Related Actions

1. Background

ESD took out a mortgage as part of its acquisition of the Farley Building in 2007. This mortgage was renewed in 2010 and is now due in February 2013. As part of the process of obtaining the original mortgage and securing its renewal in 2010, MSDC procured Jerome Haims Realty Inc. ("JHRI") to carry out the requisite valuation services.

ESD Directors authorized the retention of JHRI, an independent appraiser, in June 2007 for an original contract amount not to exceed $81,400. In April 2008, the ESD Directors authorized an amendment to the JHRI contract to a total new amount of $156,400. Then, in order to complete an appraisal update for the rollover of the original mortgage, the ESD Directors authorized an amendment to the JHRI contract in October 2009, bringing the total contract amount of $256,400.

MSDC and ESD are in discussions with the primary to lender to rollover the existing mortgage for another three year period. In order to effect this transaction, an update of the previous appraisals of the Farley building and its associated transferable development rights (TDRs) will be necessary.

JHRI proposes to update its previous comprehensive appraisal for $46,000. Only $22,000 of the existing JHRI contract remains uncommitted, and so accordingly, MSDC Directors are requested to authorize MSDC to amend the existing JHRI contract by increasing the amount of such contract by $28,600 to a new contract amount of $285,000. This amount will allow the contract to cover the cost of the updated appraisal, plus a 10% contingency amount of $4,600.
2. **Contract Summary**

Consultant: Jerome Haims Realty, Inc. ("JHRI")

Scope of Services: In June 2007, ESD Directors authorized the retention of JHRI, an independent appraiser with the experience and capacity to perform required appraisal and valuation work, to perform the necessary appraisal work to secure the original ESD mortgage of the Farley building. This contract was amended in April 2008 and again in October 2009. Appraisal services to date have included valuation of the Farley building itself and of the Farley building TDRs. JHRI has performed satisfactorily under the existing contract. Additional valuation services are now necessary, building on previous work conducted by Haims. Therefore, MSDC staff recommends that the JHRI contract be amended to permit such additional services.

Contract Amount: Current limit is $256,400, of which $22,000 is uncommitted. Amendment will increase contract amount by $28,600 to a new total contract amount of $285,000. Contract Reporter Exemption has been sought for this amendment.

3. **Environmental Review**

The request to amend a consultant contract 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 in connection with the authorization.

4. **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.

5. **Affirmative Action**

The Corporation’s non-discrimination and affirmative action policy will apply to this contract, but there are no DMWBE goals associated with this contract.
6. **Requested Actions**

The Directors are requested to authorize the Corporation to amend the existing contract with Jerome Haims Realty, Inc. for valuation services to bring the total contract amount to $285,000.

7. **Recommendation**

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

8. **Attachments**

   Resolutions
NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contract with Jerome Haims Realty, Inc., for Valuation Services; and Authorization to Take Related Actions

October 12, 2012

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

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized Amend Existing Contract for valuation services with Jerome Haims Realty, Inc. to increase total contract amount to $285,000 for the purposes of additional valuation 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.

*   *   *
FOR CONSIDERATION
October 12, 2012

TO: The Directors
FROM: Timothy Gilchrist
SUBJECT: New York (New York County) – Moynihan Station Civic and Land Use Improvement Project
REQUEST FOR: Authorization to Grant Easements with Respect to the Portions of the James A. Farley Post Office Building and Annex that Will Become Part of the Expanded West End Concourse at the Completion of Phase 1 of the Moynihan Station Project; and Authorization to Take Related Actions

1. BACKGROUND

As part of Phase 1 of the Moynihan Station Project, MSDC will oversee the construction of the extension and widening of the West End Concourse to provide access to Platforms 3 thru 11 in Penn Station (the “New WEC”), which is located under the Farley complex.

The New WEC will be used by Long Island Railroad (“LIRR”), New Jersey Transit, and Amtrak passengers.

In support of the Phase I Project, the Metropolitan Transportation Authority (the “MTA”), the parent of LIRR, is contributing Thirty-Five Million, Five Hundred Thousand Dollars ($35,500,000.00) toward the Phase I Project.

Authorization is sought to (i) grant to LIRR, its successors and assigns, a perpetual easement and right-of-way upon, over, under and across the portions of the Farley complex in order for LIRR to access and maintain the extended and widened New WEC and (ii) enter into an agreement with National Railroad Passenger Corporation (“Amtrak”) pursuant to which ESD will provide to Amtrak the same easement in the event that LIRR is no longer using or maintaining the WEC or Amtrak requests such easement.

The existing West End Concourses is 216’ by 16’6” and utilizes an easement that was originally provided to LIRR by the United States Postal Service. The requested easement will extend the existing easement in order to encompass the expansion of the concourse to 405’ by 48’. The concourse is and will continue to be suspended from the Farley superstructure. A schematic of the proposed easement for the New WEC is attached.
In accordance with the New York State Public Authorities Accountability Act of 2009, MSDC has undertaken an independent appraisal of this space. Jerome Haines Realty conducted this appraisal for MSDC over the summer of 2012, and found the space to have a zero value because of its location, access limitations and the cost of construction required in order to utilize the space for non-railroad activities. A summary of the appraisal is attached and the full appraisal shall be filed in the records of the corporation.

MTA, LIRR and Amtrak have entered into an Operation and Maintenance Agreement for the New WEC. Upon completion of the construction of the New WEC, LIRR and Amtrak will inspect and accept the improvement and provide for its operation and maintenance in perpetuity.

2. NON-DISCRIMINATION AND CONTRACT AND SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, MSDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business in the performance of MSDC contracts. For purposes of this contract, however, goals will not be established due to the unavailability of minority and women-owned businesses for performance of this contract.

3. 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.

4. REQUESTED ACTIONS

The Directors are requested to authorize necessary and appropriate actions to effectuate the foregoing.

5. RECOMMENDATION

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

6. ATTACHMENTS

Resolution
WEC Appraisal Summary
Schematic of Moynihan Station WEC LIRR Easement
New York (New York County) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Grant Easements with Respect to the Portions of the James A. Farley Post Office Building and Annex that Will Become Part of the Expanded West End Concourse at the Completion of Phase 1 of the Moynihan Station Project; and Authorization to Take Related Actions

RESOLVED, that on the basis of the materials (the “Materials”) presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Moynihan Station Civic and Land Use Improvement Project (the “Project”), the Corporation is hereby authorized to grant the easements with respect to the James A. Farley Post Office Building and Annex for the purposes and substantially on the terms and conditions set forth in the Materials, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the easements as he or she may deem necessary or appropriate in connection with the furtherance of the Project; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

* * *
July 30, 2012

Michael J. Evans
Vice President and Deputy Director
Moynihan Station Development Corporation
421 Eighth Avenue
New York, New York 10001

Re: Executive Letter of Value
PAAA Appraisal of
West End Concourse
Area Below Eighth Avenue Staircase
At Moynihan Station
New York, New York
Block 755, Lot 40

Dear Mr. Evans:

At your request and in accordance with our agreement, we have inspected and appraised the value of the above-referenced property. That property consists of an extension to an existing permanent easement at the West End Concourse (WEC) area at the new Moynihan Station. You have provided a detailed metes and bounds description of the property, as well as an outline of the property, against the backdrop of the part of Moynihan Station at the Eighth Avenue and East 33rd Street frontage.

By agreement, we are providing you with this executive letter of value, to indicate our valuation conclusions. This will serve to accommodate your requirements for internal board review and will be followed shortly with a more comprehensive appraisal, with the same conclusions.

At the time of the original construction of the WEC, the USPS (ESDC's and MSDC's predecessor-in-interest) granted a permanent easement to the LIRR for the construction and maintenance of the portion of the WEC between a lower and upper elevating plane from 319 feet to 339 feet in the original Pennsylvania Railroad datum.
Michael J. Evans  
Vice President and Deputy Director  
Moynihan Station Development Corporation  
Re: Executive Letter of Value  
PAAA Appraisal of  
West End Concourse  
Area Below Eighth Avenue Staircase  
At Moynihan Station  
New York, New York

The subject property, as represented by a permanent easement within the Moynihan Station, is located directly below the floor level under the main stairway at 8th Avenue. Except for a small moat area at both the southwest corner of West 33rd Street and the northwest corner of East 31st Street, the staircase extends almost fully between those two streets, on the west side of Eighth Avenue (the easterly façade of the new Moynihan Station), (formerly Farley Post Office Building). The area immediately below the staircase is used primarily for mechanical and utility purposes. This includes various pumps, motors, generators and other equipment necessary to the operation of the property. The easement area is directly below the floor level of that mechanical space below the main staircase.

The Moynihan Station, as noted, extends two full blocks, between West 33rd Street on the North to West 31st Street on the South, from the west side of Eighth Avenue to the east side of Ninth Avenue. The existing, high, five-story steel and masonry structure has a historic designation on the façade and on the Post Office lobby on the Eighth Avenue frontage at the top of the stairs. Although the entire plot contains an area of 364,000 square feet, the additional area for the permanent easement includes an area of only 27,411 square feet and is located as discussed above.

The purpose of the appraisal is to provide a value, for PAAA requirements, of the additional area requested by the MTA/LIRR for the permanent easement associated with the WEC lease. This will be discussed more fully within the expanded appraisal. The additional area is required for various mechanical equipment, security equipment, electrical equipment, etc.

As noted, the total additional easement area is encompassed by an upper limiting plane of 339 feet and a lower limiting plane of 313.31 feet in the Pennsylvania Station datum. However, as discussed above, the upper limiting plane is directly below the concourse level. The total available height is 26 feet. The track level is at the location of the lower limiting plane. The minimum required height above to top of rail, per Amtrak Specification Number 9 is 18 feet.

JEROME HAIMS REALTY, INC.
Michael J. Evans  
Vice President and Deputy Director  
Moynihan Station Development Corporation  
Re: Executive Letter of Value  
PAAA Appraisal of  
West End Concourse  
Area Below Eighth Avenue Staircase  
At Moynihan Station  
New York, New York  

Typically, the area Above Top of Rail (ATOR) for commuter cars is less than required for freight. In many cases, freight cars will have double containers, requiring a minimum height of 18 feet, plus approximately 1.5 feet minimum for the pantograph, or 19.5 to 20 feet. Commuter cars, as to be found at Moynihan Station, will require approximately 16.5 feet, plus another 1.5 feet, or approximately 18 feet ATOR. Thus, the available, working or usable, area at the additional easement area, is approximately 26 feet, less 18 feet, or eight feet. This will require a six-foot high structure (a mezzanine) to be suspended beneath the concourse floor, (i.e., the upper limiting plane). The entire “mezzanine” area to be created below the concourse floor, within the easement headroom, will have a usable height of approximately six feet, excluding the thickness of the floor, additional supports, etc.

Valuation:

We have discussed the location of the usable area within the expanded permanent easement area. We have also discussed the available space (27,411 square feet) and the available usable headroom (six feet) within that expanded easement area.

Our valuation is based on an analysis of comparable commercial and industrial/storage rentals in and around the Pennsylvania Station area. Typically, we have found that, in most cases within the West 34th Street retail corridor, storage basements are included at no charge or at a nominal charge, with the rental of the street level retail space. In rare cases are basement storage areas leased to tenants other than the first floor retail tenant. In those cases, the basement storage area will have a rental value of approximately 10% to 15% of the upper floor office space in a building. Upper floor space is typically at $35 to $42 per square foot in this location. At a rate of 10% to 15%, the basement storage space would be at a rental value of $3.50 per square foot to $6.30 per square foot. However, that rental value assumes good headroom of 7.5 to 8.5 feet and easy accessibility. Further, in the case of the subject, the tenant must create the storage area (the “mezzanine” space) by hanging the floor below the floor of the concourse. The created storage space will be in the headroom area above the top of the rails, as discussed previously.

We estimate that the nominal cost of creating a storage space in this difficult location would be at least $60 per square foot. This includes the cost of the steel hangers, to be bolted or welded to the floor beams above and the new mezzanine floor attached to the hangers. This space must be sufficiently strong to support a mechanical load of at least 150lbs per square foot, plus the additional cost of lighting, electrical, ventilation, communication, all built above an active rail system, 18 feet above the tracks.

Jerome Haims Realty, Inc.
Michael J. Evans  
Vice President and Deputy Director  
Moynihan Station Development Corporation  
Re: Executive Letter of Value  
PAAA Appraisal of  
West End Concourse  
Area Below Eighth Avenue Staircase  
At Moynihan Station  
New York, New York

Based on the above, our estimate is that the space has zero value in the real estate market and would have zero value to the MTA, when we consider that the cost to create the space is equal to or greater than the potential capitalized market rental value of the space.

Opinion of Value:

Additional Easement Area: No value ($0.00)

As noted, the full appraisal is in preparation and can be delivered shortly. The value will be as stipulated in this executive letter.

Very truly yours,

JEROME HAIMS REALTY, INC.

[Signature]

Sheldon Gottlieb, MAI  
Senior Vice President  
and Chief Appraiser  
Certified New York State  
General Real Estate Appraiser  
Certificate No. 46000000579

HM

JEROME HAIMS REALTY, INC.
UNDERLYING ASSUMPTIONS AND
LIMITING AND QUALIFYING CONDITIONS

This appraisal is subject to the following Underlying Assumptions and Qualifying and Limiting Conditions:

1. The appraisal covers the property as described in this report and the areas and dimensions as shown herein are assumed to be correct.

2. The appraiser has made no survey of the property and assumes no responsibility in connection with such matters. Any sketch or identified survey of the property included in this report is only for the purpose of assisting the reader to visualize the property.

3. Responsible ownership and competent management are assumed.

4. No responsibility is assumed for matters involving legal or title consideration.

5. This report has been prepared in accordance with the requirements of the Appraisal Institute.

6. The information identified in this report as being furnished by others is believed to be reliable, but no responsibility for its accuracy is assumed.

7. That the present zoning will remain in force, unless otherwise adjusted in the zoning section of this report.

8. That the appraisal report will not be utilized in any present or proposed, public or private syndication of any of the interests in the property unless prior written agreement has been obtained from the signatories to this report.

9. The Bylaws and Regulations of the Appraisal Institute requires each member and candidate to control the use and distribution of each appraisal report signed by such member or candidate. Therefore, except as hereinafter provided, the party for whom this appraisal report was prepared may distribute copies of this appraisal report, in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, selected portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report. Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of advertising media, public relations media, news media, sales media or other media for public communication without the prior written consent of the signatories of this appraisal report.
10. The appraiser is authorized by the client to disclose all or any portion of this appraisal report and the related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraisers to comply with the Bylaws and Regulations of the Institute now or hereafter in effect.

11. The appraiser is not required to give testimony or attendance in court by reason of this appraisal unless arrangements have been previously made therefore.

12. Unless stated otherwise, the appraiser has not learned of any asbestos, hazardous waste or toxic material in existence at the subject property. In any event, the appraisers are not qualified to detect such substances and urge that a qualified expert be employed for this procedure. The appraisal and indicated value, therefore, do not consider any costs to cure that may arise from hazardous material contained at the property, unless separately noted herein.

13. Unless stated otherwise in the appraisal, the appraiser has not considered compliance with the requirements of the Americans With Disabilities Act of 1990 (ADA) in the estimate of value in this appraisal. The appraisers are not qualified to determine such compliance and recommend a qualified expert be employed for this procedure. Failure to comply with the requirements of the ADA, including the costs to cure any non-complying items, can negatively affect the value estimated herein.

14. All of the facts, conclusions and observations contained herein are consistent with information available as of the date of the report. The value of real estate is affected by many related and unrelated economic conditions, local and national. The real estate market is constantly fluctuating and changing. We cannot predict nor in any way warrant the conditions of a future real estate market; the appraiser can only reflect what the investment community, as of the date of the appraisal, envisions for the future in terms of rental rates, expenses, supply and demand.

15. Acceptance and/or use of this appraisal report by the client and/or any third party constitutes acceptance of the stated limiting conditions and assumptions. The appraisers’ and/or reviewers’ responsibility and liability extends only to the stated client, not to subsequent parties or users, and is limited to the amount of the fee received by the appraisers in conjunction with performance of this appraisal and related consulting services and/or court preparation, deposition, and testimony.
CERTIFICATION

I certify that, to the best of my knowledge and belief,

- The statements of fact contained in this appraisal report are true and correct.

- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use, of this report.

- My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

- As of the date of this report, I, Sheldon Gottlieb have completed the requirements of the continuing education program of the Appraisal Institute.

- I have made a personal inspection of the property that is the subject of this report.

- In the preparation of this appraisal report others assisted in the gathering of the information, comparable sales, inspection of property, etc. However, no one other than the undersigned prepared the analyses, opinions, and conclusions concerning the value of the real estate set forth in this appraisal report.

- I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the subject property within the three-year period immediately preceding this assignment.

______________________________
Sheldon Gottlieb, MAI
Certified New York State
General Real Estate Appraiser
Certificate No. 46000000579
METES AND BOUNDS OF PERMANENT EASEMENT AREA

12 June 2012
170105502

WRITTEN DESCRIPTION
WEST END CONCOURSE
BLOCK 755, LOT 40
IN THE CITY OF NEW YORK
BOROUGH OF MANHATTAN
NEW YORK COUNTY, NEW YORK

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

Beginning at a point that is distant 34.22 feet westerly from the corner formed by the intersection of the southerly side of West 33rd Street (60' Wide) with the westerly side of 8th Avenue (100' Wide); thence

1. South 00°02'09" East, and parallel with the westerly side of 8th Avenue a distance of 3.78 feet; thence

2. South 69°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 8.30 feet; thence

3. South 22°57'39" West, a distance of 17.21 feet; thence

4. South 00°02'09" East, and parallel with the westerly side of 8th Avenue a distance of 20.60 feet; thence

5. North 69°57'51" East, and parallel with the southerly side of West 33rd Street a distance of 6.32 feet; thence

6. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 16.02 feet; thence

7. South 69°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 5.32 feet; thence

8. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 27.05 feet; thence

9. North 69°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 5.02 feet; thence
10. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 12.85 feet; thence

11. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 5.02 feet; thence

12. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 31.54 feet; thence

13. North 88°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 23.87 feet; thence

14. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 57.25 feet; thence

15. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 23.87 feet; thence

16. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 53.08 feet; thence

17. North 89°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 23.87 feet; thence

18. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 53.90 feet; thence

19. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 23.87 feet; thence

20. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 37.44 feet; thence

21. North 89°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 23.87 feet; thence

22. South 00°02'09" East, and parallel with the westerly side of 8th Avenue, a distance of 58.18 feet; thence

23. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 23.87 feet; thence

24. South 00°02'09" East and parallel with the westerly side of 8th Avenue, a distance of 2.64 feet; thence
25. South 89°67'51" West, and parallel with the southerly side of West 33rd Street, a distance of 51.76 feet; thence

26. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 9.14 feet; thence

27. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 8.00 feet; thence

28. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 10.41 feet;

29. North 89°01'30" East, a distance of 10.33 feet; thence

30. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 11.08 feet; thence

31. North 89°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 4.91 feet; thence

32. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 21.47 feet; thence

33. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 8.24 feet;

34. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 2.04 feet; thence

35. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 10.04 feet; thence

36. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 10.25 feet; thence

37. North 89°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 10.04 feet; thence

38. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 35.21 feet; thence

39. South 89°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 10.04 feet; thence

40. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 10.26 feet; thence
41. North 89º57'61" East, and parallel with the southerly side of West 33rd Street, a distance of 9.45 feet; thence

42. North 00º02'09" West, and parallel with the westerly side of 6th Avenue, a distance of 35.70 feet; thence

43. South 89º57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 9.45 feet; thence

44. North 00º02'09" West, and parallel with the westerly side of 6th Avenue, a distance of 10.08 feet; thence

45. North 89º57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 9.45 feet; thence

46. North 00º02'09" West, and parallel with the westerly side of 6th Avenue, a distance of 34.23 feet; thence

47. South 89º57'61" West, and parallel with the southerly side of West 33rd Street, a distance of 9.45 feet; thence

48. North 00º02'09" West, and parallel with the westerly side of 6th Avenue, a distance of 10.25 feet; thence

49. North 89º57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 9.45 feet; thence

50. North 00º02'09" West, and parallel with the westerly side of 6th Avenue, a distance of 35.24 feet; thence

51. South 89º57'61" West, and parallel with the southerly side of West 33rd Street, a distance of 9.45 feet; thence

52. North 00º02'09" West, and parallel with the westerly side of 6th Avenue, a distance of 10.25 feet; thence

53. North 89º57'61" East, and parallel with the southerly side of West 33rd Street, a distance of 9.45 feet; thence

54. North 00º02'09" West, and parallel with the westerly side of 6th Avenue, a distance of 36.82 feet; thence

55. South 89º57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 8.41 feet; thence
66. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 7.48 feet; thence
67. South 99°57'51" West, and parallel with the southerly side of West 33rd Street, a distance of 39.88 feet; thence
68. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 19.63 feet; thence
69. North 99°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 28.64 feet; thence
70. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 13.62 feet; thence
71. North 99°57'51" East, and parallel with the southerly side of West 33rd Street, a distance of 8.41 feet; thence
72. North 00°02'39" West, and parallel with the westerly side of 8th Avenue, a distance of 8.42 feet; thence
73. South 99°57'51" West, and parallel with the westerly side of 8th Avenue, a distance of 22.33 feet; thence
74. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 26.32 feet; thence
75. South 99°57'61" West, along the southerly side of West 33rd Street a distance of 21.89 feet; thence
76. North 00°02'09" West, and parallel with the westerly side of 8th Avenue, a distance of 20.51 feet to the southerly sideline of 33rd Street; thence
77. North 99°57'61" East, and parallel with the southerly side of West 33rd Street, a distance of 122.98 feet to the Point of Beginning.

This easement has an upper limiting plane of 339° and a lower limiting plane of 313.31' in Pennsylvania Railroad datum.

Encompassing an area of 27.411 Square Feet or 0.629 Acres more or less.
This description is prepared in accordance with a plan entitled "West End Concourse for Moynihan Station in Block 754 Lot 40, City of New York, Borough of Manhattan, New York County, New York," prepared by Langan Engineering and Environmental Services, Inc., New York, New York, Langan Project No. 170105502, dated 04/04/11, Drawing No. WEC1.

Paul D. Fisher
Professional Land Surveyor
New York License No. 060784

Langan Engineering & Environmental Services

360 West 3rd Street, Suite 500 • New York, New York 10014 • T: 212.479.5400 F: 212.479.5844
FOR CONSIDERATION
October 12, 2012

TO: The Directors

FROM: Timothy Gilchrist

SUBJECT: Establishment of Pre-Qualified Counsel List

RE: Approval of Pre-Qualified Counsel

1. Background

The size, nature, complexity and timing of MSDC’s projects typically require the Corporation to call on the assistance of outside counsel in various areas of expertise. In order to permit the Corporation to respond to the needs of these projects expeditiously, while having available to the Corporation the benefits of a broad solicitation of qualified outside law firms, legal department staff maintains a list of pre-qualified counsel. Legal staff for New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) conducted a broad solicitation of interested law firms, reviewed the submissions, and compiled list included with these materials. That list was adopted by the ESD Directors at their September 20, 2012 meeting and is included in these materials as Attachment A. It is recommended that this Board adopt the list for the Corporation. It is also recommended that the list remain in effect for three years, subject to extension by an additional year, in the discretion of the General Counsel or in her or his absence, the Deputy General Counsel.

2. The Solicitation

On April 23, 2012, staff placed an advertisement in the New York State Contract Reporter requesting proposals from law firms in the following areas of law: real estate and land use; environmental; construction; condemnation; bankruptcy; labor; taxation; bond financing; foreclosure and, in each case, related litigation. Proposals were due by May 17, 2012.

In addition, ESD staff contacted by letter and/or email all firms that had responded to the 2008 and 2010 solicitations, all New York State certified minority- and women-owned business enterprise firms (“M/WBE”), as well as other firms referred to by ESD staff and others. All such communications advised the firms of the Contract Reporter procurement opportunity.

Sixty-six firms responded to the solicitation. The responses were evaluated by a review committee consisting of the Deputy General Counsel and five Senior Counsels, including the Senior Counsel primarily responsible for bond financings and the Senior Counsel for environmental and litigation matters. The submissions were evaluated on the basis of, among
other things: number and experience of attorneys practicing in each area of expertise; demonstrated experience in development projects similar to those in which the Corporation engages; experience in government and public/private initiatives generally; presence and size of office(s) in New York State; the firm’s current arrangements and/or willingness to engage in future MWBE partnering or mentoring arrangements; and willingness to work within the Corporation’s limitation on hourly fees. In some cases, additional information was requested in clarification of an initial submission and nine firms were selected for interviews.

Based on the review, ESD staff recommended to the ESD Directors approval, as pre-qualified counsel, in the indicated areas of expertise, the 50 firms listed on Attachment A to these materials. The ESD Directors adopted the list on September 20, 2012. Adoption of this list by the Corporation will permit MSDC staff to respond to project needs efficiently.

3. **Financial Commitment and Selection from the List**

The Board is not now being asked to authorize the retention of any firm in connection with any matter. Instead, the requested approval would serve to make available to the Corporation a selection of candidate firms that have been through a broad solicitation process. This would allow staff to select from among the candidate firms to recommend to the Board in the future for retention in connection with particular projects without the need for conducting individual solicitations in each instance. This will save for each project the two or more months that is normally needed to conduct a solicitation, perform the necessary review and formulate a recommendation.

In addition, it is recommended that the General Counsel or, in the General Counsel’s absence, the Deputy General Counsel (each of whom also act for ESD as well as the Corporation), be given the authority to refer to any such counsel matters in related areas of expertise as she or he may deem appropriate and advisable in connection with any project. For example, in the event that a tax issue arises in connection with a real estate transaction, the General Counsel or, in the General Counsel’s absence, the Deputy General Counsel, in his or her discretion could call on the expertise of tax attorneys with the pre-qualified firm that was selected to handle the real estate aspects of the transaction.

4. **Duration of List**

It is recommended that the pre-qualified list remain in effect for three years, with the option to extend the duration of the list for an additional year at the discretion of the General Counsel or, in the General Counsel’s absence, the Deputy General Counsel.

5. **Environmental Review**

ESD staff has determined that this determination does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.
6. **Recommendation and Requested Action**

The Board is requested to approve the firms on Attachment A to these materials as pre-qualified counsel in the areas of expertise identified in such attachment (and in each case related litigation) and, in the discretion of the General Counsel or, in the General Counsel's absence, the Deputy General Counsel, such related areas of expertise as she or he may deem appropriate and advisable in connection with any project, for a term of three years plus an additional year at the option of the General Counsel or, in the General Counsel's absence, the Deputy General Counsel.

7. **Attachments**
   - Resolution
   - Attachment A
October 12, 2012

MOYNIHAN STATION DEVELOPMENT CORPORATION – Establishment of Pre-Qualified Counsel List - Approval of Pre-Qualified Counsel

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the law firms, listed in Attachment A be and each hereby is, approved as pre-qualified counsel in the various areas of expertise (and, in each case, related litigation), and in such other areas as the General Counsel or, in the General Counsel’s absence, the Deputy General Counsel, may deem appropriate or advisable in connection with any particular project or matter, such approval to remain in effect until the meeting of the Directors first occurring after September 20, 2015 or, in the discretion of the General Counsel or, in the General Counsel’s absence, the Deputy General Counsel, until the meeting of the Directors first occurring after September 20, 2016.

*   *   *

4
Attachment A:
Pre-Qualified Legal Counsel
Adopted by the Board on October 13, 2012

Real Estate and Land Use

Bond Schoeneck & King PLLC
* Brown & Hutchinson
** Bryant Rabbino LLP
  Carter Ledyard & Milburn LLP
  Damon & Morey LLP
  Day Pitney LLP
  Law Offices of Donald J. Tobias
* Gonzalez Saggio & Harlan LLP
  Harris Beach PLLC
  Hawkins Delafield & Wood LLP
  Herrick Feinstein LLP
  Hiscock & Barclay LLP
  Hodgson Russ LLP
  Holland & Knight LLP
  Ingram Yuzek Carroll & Bertolotti LLP
  Jaeckle Fleischmann & Mugel LLP
  Knauf & Shaw LLP
  Kramer Levin Naftalis & Frankel LLP
  Mentor Rudin & Trivelpiece PC
  McNamee Lochner Titus & Williams
  Nixon Peabody LLP
  Phillips Lytle & * The Gibson Law Firm
  Saunders Kahler LLP
  Schiff Hardin LLP
* Schoeman Updike & Kaufman LLP
  Shearman & Sterling LLP
  Sidley Austin LLP
  Skadden Arps Slate Meagher & Flom LLP
  Venable LLP
  Whiteman Osterman & Hanna LLP

Condemnation

Berger & Webb
Bond Schoeneck & King PLLC
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
Harris Beach PLLC
Hiscock & Barclay LLP
Kramer Levin Naftalis & Frankel LLP
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Sidley Austin LLP

* M/WBE Firm
** Certification Pending
Construction

Bond Schoeneck & King PLLC
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
* Gonzalez Saggio & Harlan LLP
Greenberg Traurig LLP
Harris Beach PLLC
Herrick Feinstein LLP
Hodgson Russ LLP
* Hoguet Newman Regal & Kenney LLP
Holland & Knight
Ingram Yuzek Carroll & Bertolotti LLP
Kilpatrick Townsend & Stockton LLP
Kramer Levin Naftalis & Frankel LLP
Mentor Rudin & Trivelpiece PC
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Saunders Kahler LLP
Schiff Hardin LLP
Shearman & Sterling LLP
Sidley Austin LLP
Venable LLP
Wasserman Grubin & Rogers LLP
Whiteman Osterman & Hanna LLP
* Wilson & Chan LLP

Environmental

Bond Schoeneck & King PLLC
Bryan Cave LLP
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
* Gonzalez Saggio & Harlan LLP
Harris Beach PLLC
Herrick Feinstein LLP
Hodgson Russ LLP
Jaechle Fleischmann & Mugel LLP
Knauf & Shaw LLP
Kramer Levin Naftalis & Frankel LLP
Mentor Rudin & Trivelpiece PC
McNamee Lochner Titus & Williams
Nixon Peabody LLP
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