

MOYNIHAN STATION DEVELOPMENT CORPORATION

Meeting of the Board of Directors of the Moynihan Station Development Corporation

At the offices of the
New York State Urban Development Corporation
d/b/a Empire State Development
633 Third Avenue – 37th Floor
New York, New York 10017

Wednesday

March 27, 2013 – 9:00 a.m.

PROPOSED AGENDA

FOR INFORMATION

1. President's Report (Oral Report)

CORPORATE ACTION

2. Approval of the Minutes of the January 18, 2013 and February 15, 2013 Directors' Meetings
3. Approval of MSDC's Operating and Capital Budgets and the Farley Building's Capital Budget for FY 2013-2014

FOR CONSIDERATION

4. Authorization to Award the Construction Contract for the Connecting Corridor
5. Authorization to Purchase an Owner's Interest General Liability Policy for the Connecting Corridor Work of Phase 1 of Moynihan Station Project
6. Authorization to Enter into a Letter Agreement with Consolidated Edison Company of New York, Inc. as part of the Connecting Corridor Improvement Project
7. Authorization to Amend a Contract for Legal Services Related to Phase 1 of Moynihan Station Project.
8. Authorization to Place Insurance Policies for the James A. Farley Post Office Building and Annex

EXECUTIVE SESSION

9. Real Estate Issues (Oral Report)

ITEM 2

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

January 18, 2013

MINUTES

In Attendance

Directors: John Porcari, Chairman (via video conference)
Karen Hedlund, (via video conference)
Timothy J. Gilchrist
Anita Romero
Paul Williams

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

Thomas Brennan, Senior Vice President – Internal Audit
Richard Dorado, Senior Counsel
Justin Ginsburgh, Chief of Staff
Andrew Grossman, Special Advisor to CF&AO
Howard Kramer, Assistant Vice President
Carlos Otero, Vice President – Contract Admin./Subsidiary Finance
Sankar Singh, Manager – Contract Audit & Admin.

**Present for the
Moynihan Station**

Development Corporation: Fred Bartoli, Project Manager
Michael Evans, Vice President
Mehul Patel, Vice President - Development
Rebecca Pellegrini – Project Manager
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Also Attending: Chris Burke, PANY&NJ
Andrew Lynn, PANY&NJ
Angel Martinez, PANY&NJ
Marco Pirozzi, PANY&NJ
Ken Hanson, Amtrak
Rebecca Reyes-Alicea USDOT/FRA
Vincent White, USDOT/FRA (via video conference)

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order by Chairman John Porcari. It was noted for the record that the meeting was being web cast. Also noted for the record was the Corporation’s policy to welcome public comment on the items on the current Agenda. Chairman Porcari briefly reviewed the protocol for comments.

The first order of business was approval of the Minutes of the November 29, 2012 and December 19, 2012 Directors’ meetings. There being no changes or corrections to the minutes, upon motion duly made and seconded, the following resolution was unanimously adopted:

180. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 29, 2012 AND DECEMBER 19, 2012 MEETINGS OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meetings of the Corporation held on November 29, 2012 and December 19, 2012, are hereby approved and all actions taken by the Directors present at such meetings, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Chairman Porcari then asked Director Timothy Gilchrist to present the next Agenda item, requesting the authorization of a change order for the construction contract with Skanska USA Civil Northeast (“Skanska”).

In his presentation Director Gilchrist explained to the Directors that the C Yard Project consisted of the construction of rooms that will hold the fan plants and electrical substation on the north end of the train shed. He stated that the funding for the C Yard Project is part of the 2012 award of the Federal Railroad Administration (“FRA”) High-Speed Rail Funds through New York State Department of Transportation (“DOT”). Director Gilchrist informed the Directors that as a result of consultation with the Long Island Railroad (“LIRR”), Amtrak and the Corporation’s outside counsel it was determined that the C Yard Project could be accomplished through a change order with Skanska rather than through a competitively bid project. He explained that the change order work is in very close proximity to Skanska’s project work. Director Gilchrist further explained that the outages for this work will be accomplished through a sixty-five day continuous outage where the contractor will work twenty-four hours a day seven days a week. He also stated that the LIRR previously agreed not to use the C Yard for a sixty-nine day period however there is still a need for outage coordination. Director Gilchrist stated that the West End Concourse contract is guaranteed thirty-two outages and if there were any conflict between the contractors it would cause a delay in the West End Concourse Project which could jeopardize the schedule as well as grant funding and lead to claims by both contractors for delay. He explained that the contractor for the West End Concourse controls the lay down area for materials and Amtrak has advised that they do not have the staff to

support two contractors for this work. Director Gilchrist stated the DOT has acknowledged that this work will be accomplished as a change order and it has been reflected in the grant which was approved by the Office of the State Comptroller. He further stated that MSDC has obtained Contract Reporter exemption approval and has reviewed this matter with FRA, New York State DOT and outside counsel. Director Gilchrist stated that the total cost is \$22,261,000 with a ten percent contingency. He explained that the award of the change order was recommended by the Port Authority of New York and New Jersey (“PANYNJ”) and MSDC’s construction manager, STA. Lastly, Director Gilchrist stated that MSDC has found Skanska to be a responsible contractor, and their submission in the change order includes a twenty percent goal for MWBE participation. He explained that currently Skanska is above the twenty percent goal on the base contract.

Following Director Gilchrist’s presentation, Chairman Porcari called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

181. NEW YORK CITY (New York COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization of a Change Order for the Construction Contract with Skanska USA Civil Northeast and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Skanska USA Civil Northeast Inc. to be responsible; and be it further RESOLVED, that in accordance with the Materials, a Change Order for the contract with Skanska USA Civil Northeast Inc. for an additional amount not to exceed \$22,261,000 plus a 10% contingency (totaling \$2,226,100) new contract amount for a total not to exceed one hundred eighty seven million twelve thousand and one hundred dollars (\$187,012,100) 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 requested that Director Gilchrist present the next Agenda item, requesting authorization to amend the contract with the New York State Office of General Services (“OGS”) to provide building management services at the Farley Post Office Building and Annex (the “Farley Building”).

Director Gilchrist’s presentation included among other things, that when ESD acquired the Farley Building from the Postal Service in 2007, ESD entered into a two year contract with OGS to provide maintenance services for the Farley Building. This two year contract has subsequently been extended. Director Gilchrist explained that the Directors are being asked to authorize the Corporation to extend the contract for another two years. He explained that the contract is being amended for the same cost plus two percent. Director Gilchrist requested that the Directors authorize the Corporation to amend the contract with OGS for an amount not to exceed \$5.5 million in one year or \$11 million in two years. However, he explained to the Directors that the final authorization of the budget for this service would be presented at the March meeting when the operating budget is adopted for MSDC and the Farley Building.

Following Director Gilchrist's presentation, Director Anita Romero asked if OGS obtains a volume discount. Director Gilchrist responded affirmatively. He stated that by using OGS the Corporation is able to take advantage of all of the Statewide let contracts for supplies, materials and vendors and has been able to work at a discount.

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

182. Moynihan Station Development Corporation – Moynihan Station Development Project – Authorization to Amend a Contract with New York State Office of General Services to provide Building Management Services at the James A. Farley Post Office Building and Annex in Manhattan

RESOLVED, that the Corporation hereby is authorized to amend the Corporation's existing contract with New York State Office of General Services, to provide building management services for the James A. Farley Post Office Building and Annex in Manhattan, by extending the term of such contract for up to two additional years, in an amount not to exceed \$5,500,000 per year or \$11,000,000 for the two year period, and otherwise substantially on the terms and conditions set forth in these Materials; and be it further

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

* * *

In his report Director Gilchrist stated among other things, that the bids for the work on the connecting corridor will be competitively bid. The documents for this work will be released for bid on Tuesday, January 22, 2013 and bids will be due on Tuesday, February 20, 2013. He explained that the next Project that the Corporation anticipates moving forward on is the E

Yard Project. Director Gilchrist stated that the work in the E Yard will be similar to the work being done in the C Yard Project. He stated that based on funding, a significant amount of the steel erection work in the West End Concourse will need to be completed before the Corporation can be certain that the use of the contingency for this work will not be necessary. Director Gilchrist stated that Chris Burke from PANYNJ is reviewing the risk analysis from the beginning of the Project and comparing that analysis against Skanska's contract to determine when the areas identified in the risk assessment are completed. Director Gilchrist asked Angel Martinez of the PANYNJ to give an update on the Project work, as well as a report on Project work anticipated during 2013.

In his report Mr. Martinez stated that they will be working on the upcoming weekend, driving piles and doing surveying work. He explained that in the next six weeks he expects to hand back Platforms 3 and 4 which will reduce the area of enclosures that were built on Platforms 3 and 4. Mr. Martinez stated that similar barricades and stair towers will be built on Platforms 7 and 8. The relocation of utilities under platforms and the installation of foundations on the platforms will continue as the work moves forward. Mr. Martinez explained to the Directors that they're anticipating several significant milestones throughout the coming year, the first being at the beginning of April when Amtrak will need to remove the catenary on Tracks 18-21. He further explained that this work is essential so that work can be conducted without the protections required with the traction catenary. Mr. Martinez stated that in the middle of June they are targeting the closure of the C Yard with a completion date no later than August. In July they anticipate building what is called a MMU ladder. He

explained that during an outage a demo shield will be erected which will allow work to be conducted without interrupting the railroad operations. Lastly, Mr. Martinez stated that later in the summer he anticipates beginning steel erection on Platform 4. Mr. Martinez explained that the goal is to have completed 25% of steel erection work.

Following Mr. Martinez report, Chairman Porcari asked is there any practical impact on Amtrak's ability to support this portion of the Moynihan work. Mr. Martinez responded that he believed that communication is the key. He explained that by communicating clear dates, and what the absolutes are, gives both sides flexibility. Mr. Martinez stated that so far they have been able to find solutions to almost all of the issues they have run into.

Following Mr. Martinez report, Director Gilchrist asked Michael Evans to give the Directors a report on upcoming events at the Farley Building. Mr. Evans informed the Directors that the Corporation continues to market the Farley Building as an event space to offset operating costs. He stated that the Corporation will sign five (5) contracts for five different fashion shows over the February Fashion Week. He further stated that the five events should generate about \$200,000. In addition, a contract has been signed for an art fair in March which he anticipates will bring in about \$100,000. Mr. Evans stated that several media outlets have shown an interest in doing a story on the Farley Building and the adaptive reuse of the space. Lastly Mr. Evans, informed the Directors that the events at the Farley Building has generated good publicity for the Project which is good, so that, the public remembers all the great work currently happening, as well as, what the building will eventually be upon

completion of the Project. Mr. Evans stated that it's a great opportunity to bring in creative people from the fashion industry and others which could lead to potential tenants in the future for the commercial space in the Farley Building that will surround the train hub.

There being no additional business, the meeting was adjourned at approximately 9:53 a.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

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

February 15, 2013

MINUTES**In Attendance**

Directors: John Porcari – Chairman (via video conference)
Karen Hedlund,
Timothy J. Gilchrist
Anita Romero (via telephone)
Tokumbo Shobowale

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

Thomas Brennan, Senior Vice President – Internal Audit
Natalie Dennery, Senior Counsel
Richard Dorado, Senior Counsel
Andrew Grossman, Special Advisor to CF&AO
Howard Kramer, Assistant Vice President
Carlos Otero, Vice President – Contract Admin./Subsidiary Finance
Sankar Singh, Manager – Contract Audit & Admin.
Bruce Tiam-Fook, Procurement Manager

**Present for the
Moynihan Station**

Development Corporation: Fred Bartoli, Project Manager
Michael Evans, Vice President
Mehul Patel, Vice President - Development
Rebecca Pellegrini – Project Manager
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Present for FRA/USDOT: Joe Peraino, Sr. Advisor to Deputy Secretary
Rebecca Reyes-Alicea, FRA NEC Program Director
Amy Tovar, Deputy General Counsel
Vincent White

Also Attending: Kelly Eustice, PANY&NJ
Andrew Lynn, PANY&NJ
Angel Martinez, PANY&NJ
Marco Pirozzi, PANY&NJ
Kathy Gilchrist, Visitor
Howard Peterson, CH2M Hill

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order at approximately 3:06 p.m. by Chairman John Porcari. It was noted for the record that the meeting was being web cast. Also noted for the record was the Corporation’s policy to welcome public comment on the items on the current Agenda. Chairman Porcari briefly reviewed the protocol for comments.

Chairman Porcari then asked Director Timothy Gilchrist to give the President’s Report.

Before presenting his President Report, Director Gilchrist stated that he wanted to thank two individuals that have been involved with the Project and are now moving on to other positions. He stated that Mehul Patel, MSDC’s Vice President – Development, since 2008 has been appointed Chief of Staff by Kenneth Adams, President and CEO of Empire State Development. Director Gilchrist further stated that Mr. Patel has been valuable to the Corporation; and within the last year has been working half-time with ESD on real estate matters. Mr. Patel will begin working in his new position on Tuesday, February 19, 2013.

Director Gilchrist then asked Kenneth Hanson of Amtrak to stand. Director Gilchrist informed the Directors that Mr. Hanson would be moving on to a position in the private sector, effective at the close of business. He explained that Mr. Hanson has served as liaison for Amtrak for the past two years; and has been very valuable in assisting the Corporation in organizing everything in order to help move the Project forward.

Following comments regarding Mehul Patel and Kenneth Hanson, Director Gilchrist asked Angel Martinez to present his status report on the Project. In his report Mr. Martinez mentioned among other things that since his last report there have been three weekend outages. During the weekend outages, 22 mini caissons have been drilled. This, he explained, completes 45 percent of the mini caisson work. Mr. Martinez explained that in regards to the Platform work, Platform 5 has been returned and barricades have been reduced so that most of Platform 3 has been returned. He informed the Directors that asbestos work is on going on the concourse level and as a result the largest four sections of the area has been completed. Mr. Martinez stated that in the coming weeks they plan to remove an old mail conveyor from Platform 4 and install new utility racks at Platforms 5 and 6. He further explained that, there will also be a significant amount of night work going on as well in the next few weeks. Mr. Martinez pointed out that he anticipates preparation work will begin for outages in the C Yard and that installation of mini caissons will be ongoing in the upcoming weekend outages. Mr. Martinez explained that in the first two weekends in March Amtrak is scheduled to perform utility relocation on Track 21. He stated that there are five significant milestones that the Project team plans to monitor very closely in the coming year. The first is the removal of the

catenary, which is scheduled for removal in the beginning of April, the second is completion of the mini caisson work by June; the third is the C Yard work; the fourth is South Mull work scheduled to begin sometime in July; and the fifth is steel erection work which is scheduled to begin in September. Mr. Martinez further stated that he believes the Project has had a good start and that the coming year will be a transition year for the Project, and he is optimistic that the milestones set by the Project team will be met in the coming year.

Next, Director Gilchrist asked Michael Evans to give the Directors a status update on the Connecting Corridor and the Farley Building. Mr. Evans stated that the Connecting Corridor bids are out and there have been nearly a dozen potential bidders who have picked up bid packages. He explained that there was an information session for potential bidders recently held at the Farley Building and that as a result of the RFI's and other questions the bid due date is now set for February 27, 2013. Mr. Evans stated that the Corporation anticipates bringing a recommendation to the Board of Director for approval in March or April. He explained that it will take approximately a month to gather and execute the required documents in order to execute the contract and issue a Notice to Proceed. Mr. Evans also mentioned that the Steering Committee meeting held on February 14, 2013 was a success and the next Steering Committee meeting is scheduled for March 15, 2013. Lastly, Mr. Evans informed the Directors that there were four fashion shows held at the Farley Building during Fashion Week. The events attracted approximately 5,000 people and generated over \$180,000 for the Corporation.

Following Mr. Evans' status report, Chairman Porcari asked Richard Dorado to present the next Agenda item, requesting authorization for the Corporation to adopt the revised Procurement Guidelines for awarding, monitoring and reporting of procurement contracts.

In his presentation Mr. Dorado stated among other things, that as a result of changes in the law and regulations over the past year, ESD has revised their procurement guidelines for adoption by ESD and its subsidiaries. Mr. Dorado explained the proposed guidelines supplement MSDC's compliance with procurement requirements of the Project's primary funders, including the Federal Railroad Administration, US Department of Transportation and New York State Department of Transportation. He further explained that the proposed guidelines set forth policies and procedures to be followed by ESD and all of its subsidiaries for the procurement of goods and services. Mr. Dorado stated that the proposed guidelines are consistent with the State's Procurement Council's Guidelines as well as the Governor's directive to all State agencies and public authorities regarding making responsible spending decisions, as well as monitoring what is being spent to insure the highest level of fairness and non-discrimination, openness and transparency.

Mr. Dorado then gave a summary of the changes to the Minority Women Business Enterprise ("MWBE") requirements. He stated that primarily the changes relate to the establishment of ESD's Office of Contractor and Supplier Diversity ("OCSD"), and the threshold limit for solicitation of \$200,000 to State certified minority and women owned business enterprises and small business. Mr. Dorado explained that OCSD replaces ESD's Affirmative

Action Department, and that the revised guidelines reflect implementation of more rigorous standards for solicitation and utilization of minority and women and small business vendors and contractors on all of ESD and ESD's subsidiaries contracts. He informed the Directors that OCSD is working with NY State's Division of Minority and Women Business Development in order to implement the best practices in procurement diversity. He stated that the aggregate diversity target for ESD and its subsidiaries is 23 percent with value subset target of 13 percent for minority contractors and 10 percent for women-owned contractors, as well as, implementation of the State's \$200,000 threshold for solicitations exclusively made to contractors and vendors that are State certified MWBE and which satisfy the State law definition for a small business. He further explained that contracts with a value of \$200,000 or less can be solicited exclusively for a certified MWBE and a compliant small business. Mr. Dorado explained that a revised board resolution to adopt the guidelines had been circulated to the Directors prior to the meeting, with the primary change being that the resolution authorizes and directs MSDC's senior officer to interpret the guidelines in a manner consistent with: (1) the staff of the Corporation initiating procurements and the Board of the Corporation authorizing procurements and (2) ESD staff reviewing and advising the Corporation on its compliance with the guidelines and ESD staff processing the procurements in accordance with the Guidelines and applicable law and regulations.

Following Mr. Dorado's presentation, Chairman Porcari called for a motion for approval, upon motion duly made and seconded the following resolution was unanimously adopted:

183. MOYNIHAN STATION DEVELOPMENT CORPORATION – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts.

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 proposed Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (the "Guidelines") adopted on January 18, 2013 by the New York Urban Development Corporation d/b/a Empire State Development ("ESD), the parent corporation of the Corporation, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the President or his/her designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution; and

BE IT FURTHER RESOLVED, that the President or his/her designee, or in the absence of the President or such designee, the acting senior officer of the Corporation, is authorized and directed to interpret the Guidelines in a manner consistent with: (i) the staff of the Corporation initiating procurements and the Board of the Corporation authorizing procurements, and (ii) ESD staff reviewing and advising the Corporation on its compliance with the Guidelines and ESD staff processing the procurements in accordance with the Guidelines and applicable law and regulations.

* * *

Chairman Porcari then requested that Director Gilchrist present the next Agenda item, appointing Michael Evans Acting President of MSDC.

In his presentation Director Gilchrist stated that as he leaves the Project which he loves and is proud of, and as he ends his career in transportation and State government, he is confident that he is leaving the Project in capable hands. He explained that it is time for him to move on to new adventures. He stated that he wasn't sure what those new adventures would be, but he plans to find them. Director Gilchrist thanked his wife Kathy, who was present at the meeting, for her support and willingness to move to NYC in order for him to take the job.

He also thanked the MSDC staff, Michael Evans, Mehul Patel, Thelma Washington, Rebecca Pellegrini and Fred Bartoli, as well as the Port Authority of New York and New Jersey (“PANYNJ”) staff, Andy Lynn, Angel Martinez, Bruno Signorelli and Kelly Eustice for all of their help on the Project. Director Gilchrist then thanked the Directors and ESD staff for their help in moving the Project forward. He stated that he has worked with Michael Evans for the past five years, and believes Mr. Evans is capable and the right person to move the Project forward. Director Gilchrist recommended that the board appoint Michael Evans, Acting President of the Moynihan Station Development Project.

Following Director Gilchrist’s presentation and comments, Chairman Porcari commented that he and the other Board members owe Director Gilchrist a debt of gratitude. Chairman Porcari stated that without Director Gilchrist and the rest of the MSDC staff, the Project would not be under construction today. He stated that Director Gilchrist is appreciated for the work he has accomplished on the Moynihan Project.

Director Anita Romero echoed what Chairman Porcari said and stated that Director Gilchrist and the entire MSDC staff have done a great job and that their work is very much appreciated.

Director Tokumbo Shobowale added that it is remarkable how long the Project has been a concept, and now that concept has progressed into construction. He stated that he believed Director Gilchrist’s conceptualization of a series of discrete projects has been essential

in moving the Project to where it is today.

Following comments by the Directors, Chairman Porcari entertained a motion for approval, upon motion duly made and seconded the following resolution was unanimously adopted:

184. New York (New York County) - Moynihan Station Civic and Land Use Improvement Project – Appointment of Michael Evans as Acting President, MSDC

RESOLVED that, based on the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the Corporation hereby appoints Michael Evans as Acting President of the Corporation, to have and to hold all the powers of Acting President, effective from February 21, 2013 until his earlier resignation or removal; and be it further

RESOLVED that in accordance with and for all purposes of the Corporation By-Laws, Mr. Evans is an "officer" of the Corporation; and be it further

RESOLVED that the Chairman of the Corporation or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to take any and all actions as may be necessary or appropriate to effectuate the foregoing Resolutions.

* * *

Chairman Porcari then 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:

185. 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 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 approximately 3:32 p.m. Once the meeting was back in Open Session, Chairman Porcari noted for the record that no votes were taken during the Executive Session.

There being no additional business, the meeting was adjourned at approximately 3:34 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

ITEM 3

FOR CONSIDERATION

March 27, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Approval of MSDC Operating Budget, MSDC Capital Budget and Farley Capital Budget for FY 2013-14

PROJECT UPDATE

The Moynihan Station Project (the “Project”) will create a new intercity passenger rail facility and commercial development within the James A. Farley Post Office Building (the “Farley Building”), located on the Manhattan superblock between Eighth and Ninth Avenues and West 31st and 33rd Streets.

Subject to appropriate Director Authorization, activities for the coming 2013-14 Fiscal Years are expected to include:

- Signing of a Construction Contract for the Connecting Corridor, with work starting in May 2013;
- Negotiation with the Conditionally Designated Developer on Phase 2 of the train hall project, use of the remaining portions of the Farley Building, and the transfer of 1 million square feet of Farley Building Transferable Development Rights (“TDRs”);
- Work with Empire State Development, the Port Authority of New York and New Jersey and the City of New York on plans for the disposition of 1.5 million sq. ft. of remaining Farley Building TDRs;
- Planning and design work with Amtrak on Phase 2;
- Development of a revised Phase 2 financing strategy and operating plan; and
- Continued operation of the Farley Building, including investments to increase interim uses.

New York State Finance Law requires corporate directors to approve operating and capital budgets prior to the end of the preceding fiscal year. In order to comply with this Law, the MSDC Directors are being asked to approve MSDC's proposed FY 2013-14 budgets as described below.

The Directors are also asked to review the Annual Justification of Contracts, which is included as part of the attachments to these materials. The Annual Justification of Contracts provides an overview of the outstanding Corporation contracts as well as anticipated contracts for the coming Fiscal Year.

MSDC Operating Budget

The total FY2013-2014 MSDC Operating Budget is projected at \$423,349. This is an approximately 60% reduction in the amount budgeted for FY2012-13, and it is an approximately 45% decrease in the projected expenses for FY2012-13.

These reductions primarily are driven by reduced MSDC staff costs.

In FY2012-13, MSDC moved three staff from full-time to half-time and left one full-time position vacant for the year.

Recent staff departures will further reduce staff costs for FY2013-14. At this time there are no plans for MSDC to fill these new vacancies or the previously vacant position. However, the Board will be consulted and authorization will be sought to increase the budget for staff costs should the currently planned level of staffing for FY2013-14 become a concern.

Of note, projected non-personal expenses for FY2012-13 are approximately 44% below the budgeted amount for non-personal services for this period. This is largely because there were no public hearings held during this period, the advertising for which is a significant budget line in the spending plan. As public hearings will be necessary to advance the sale of Farley TDRs and advance Phase 2, the FY2013-14 non-personal services spending plan maintains this budget line.

As set forth in Attachment A, the budgeted operating expenses for MSDC for FY2013-14 include the following items:

Personal Services

- \$319,420 to cover salary and fringe benefits for two full-time positions and two half-time positions.

Non-Personal Services

- \$103,929 budgeted, an increase of \$804 from the amount budgeted for FY2012-13.
- This increase is driven by the increase in the MSDC share of the ESD corporate insurance package.
- MSDC reduced planned expenses on travel and office supplies.

- Planned non-personal expenses for FY2013-14 include:
 - Office expenses, including copier rent and copying charges, telephone service and secure data lines to ESD;
 - The stenography costs for MSDC Board meetings;
 - Travel and professional memberships;
 - Insurance, including MSDC's share of ESD corporate insurance, insurance advisory services, Directors and Officers insurance, Worker's Compensation, Accidental Death and Disability, etc; and
 - Reserves for public hearings and publication expenses if property transactions progress to the point where environmental findings and hearings are required.

Source of Funds

The MSDC Operating Budget is partly funded—60%--from the overall project budget for Phase 1 of the Moynihan Station Project, through a grant administered by the Federal Railroad Administration (FRA).

The remaining portion of the MSDC Operating Budget—40%--is now funded from the proceeds generated by events held at the Farley Building in advance of the start of construction on Phase 2 of the Moynihan Station Project.

MSDC Capital Budget for Phase I

As set forth in Attachment B, the FY2013-14 budgeted expenses for Phase 1 total \$80,700,000 and include the following items:

Design & Other Soft Costs

Construction Phase Design Services	\$3,035,500
PANYNJ Program Management	1,264,500
Integrity Monitor	450,000
Subtotal	\$4,750,000

Legal Costs

(Holland & Knight)	50,000
Insurance	150,000

Construction

Skanska—WEC & C-yard	59,250,000
Connecting Corridor	4,500,000
Amtrak Force Account	6,500,000
NYCT Force Account	500,000
Construction Management	5,000,000
Subtotal	\$75,750,000
Total	\$80,700,000

The above figures are the expected cash payments in FY2013-14.

Source of Funds

Funding for MSDC Capital Budget for Phase 1 for FY2013-14 will come from existing funding agreements with the FRA, PANYNJ, Amtrak and the Metropolitan Transit Authority (MTA).

Farley Building Capital Budget

This budget covers the operation and maintenance of the Farley Building, as well as, work conducted to advance Phase 2 of the Moynihan Station Project.

The spending plan for FY2012-13 was significantly decreased from expenses the prior year due to the completion of the fit-out work for the new USPS space in the Annex. Additionally, projected expenses for FY2012-13 are expected to be approximately 10% below planned expenses for the period. This is primarily due to lower-than-expected legal costs relating to Phase 2 as well as the fact that costs relating to the replacement of the water tank now will be paid in FY2013-14 instead of FY2012-13 as originally planned. MSDC also did not move forward with a contract for an Owner's Representative for Phase 2 as originally planned.

Also of note, MSDC will incur a one-time charge of \$800,000 in FY2012-13 as a result of the settlement agreement reached with USPS on claims arising from the delay of the completion of the fit-out of their new space in the Annex.

As set forth in Attachment C, the FY2013-14 budgeted expenses for the Farley Building total \$7,800,000 and include the following items:

Acquisition Costs

- \$500,000 to cover the two \$250,000 principal repayments now required in FY2013-14 as part of the terms of the mortgage.

Design & Other Soft Costs

- \$25,000 for real estate advisory services provided by Washington Square Partners ("WSP").
- \$25,000 for URS for support on major building maintenance projects.

Legal Costs

- \$125,000 for Bryan Cave, land use and public approvals counsel.
- \$350,000 for Kramer Levin, real estate transaction counsel.

Property Management/Maintenance

- \$4,800,000 to cover the cost of the property management contract with the New York State Office of General Services. This contract includes within it the steam, electricity, security, and building management and maintenance costs for the Farley Building. The increase over the amount planned for FY2012-13 reflects increased contingency costs.

Insurance

- \$776,276 for the cost of building insurance.

Construction Costs

- \$600,000 for the replacement of the water tank.

Contingency & Capital Reserve

- Given the age and deterioration of the Farley Building, MSDC and ESD believe it prudent to budget \$598,724 for general contingency and capital reserve. Use of these funds would require Board authorization in accordance with the procurement guidelines adopted by MSDC.

Source of Funds

The budget for the Farley Building will be funded in part by the USPS rent (currently \$1,350,000 annually) and revenues from events at the Farley Building.

Additional funds will be provided by PANYNJ.

Should there be a closing with the Conditionally Designated Developer for Phase 2, or should further funding become available for Phase 2, these funds may be used for expenses outlined in this budget. And Board action will be requested for design and other costs related to Phase 2 or costs related to the sale of Farley Building TDRs.

ENVIRONMENTAL REVIEW

ESD staff, on behalf of MSDC, has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

REQUESTED ACTIONS

The Directors are requested to approve the attached MSDC Operating, MSDC Capital and Farley Building Capital Budgets for Fiscal Year 2013-14.

RECOMMENDATON

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

ATTACHMENTS

Resolutions

Attachment A – FY2013-14 MSDC Operating Budget

Attachment B – FY2013-14 MSDC Capital Budget

Attachment C – FY2013-14 Farley Building Capital Budget

March 27, 2013

NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project
– Approval of MSDC Operating, MSDC Capital and Farley Building Capital Budgets for FY 2013-14

RESOLVED, that on the basis of the materials submitted to this meeting, a copy of which is ordered filed with the records of the Corporation, the Corporation does hereby authorize, approve, and adopt, subject to the availability of funds, the Moynihan Station Development Corporation – FY2013-14 Operating Budget, the Moynihan Station Development Corporation – FY2013-14 Capital Project Budget (collectively the “Corporation’s Budget”), and the Farley Building – FY2013-14 Capital Budget substantially in the form set forth in the materials; and be it further

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

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

* * *

ATTACHMENT A

Empire State Development
Moynihan Station Development Corp
Operating Budget FY 2013-14

	Actual Expense FYE 2012	Spending Plan FYE 2013	Projected Expense FYE 2013	Spending Plan FYE 2014	Comments
<u>PERSONAL SERVICES (PS)</u>					
Salaries	716,713	703,490	532,278	238,373	
Fringe Benefits	183,786	246,222	180,975	81,047	
TOTAL PERSONAL SERVICES	900,499	949,712	713,253	319,420	
HEADCOUNT	7	7	6	3	
<u>NON-PERSONAL SERVICES (PS)</u>					
Professional Fees					
Legal Fees	0	0	0	0	
Consultant Fees	0	0	0	0	
Accounting / Audit Fees	0	0	0	0	
Total Professional Fees	0	0	0	0	
Other Non-Personal Services					
Employee Travel & Meals	1,476	2,500	495	1,000	
Seminars & Conferences	0	500	0	500	
Dues & Memberships	0	1,000	0	1,000	
Subscriptions & On-Line Services	0	0	0	0	
Office Occupancy Expenses	41,596	0	0	0	
Insurance	16,187	22,625	21,963	23,929	
Agency Temps	0	5,000	0	5,000	
Telephone/Fax/Internet	8,736	30,000	31,571	30,000	
Postage/Express Mail/Messenger	1,023	1,000	788	1,000	
Office Supplies	922	1,000	0	500	
Advertising/Promotion/Public Hearing	0	30,000	0	30,000	
Printing & Reproduction	0	5,000	0	5,000	
Board Meeting Recording Services	NA	NA	1,632	2,000	
IT Equipment/Services/Copying	0	1,000	2,905	3,000	copier
Other Outside Service	0	1,000	0	1,000	
Other Expenses	1,520	2,500	0	0	
Total Other Non Personal Services	71,460	103,125	59,354	103,929	
TOTAL NON-PERSONAL SERVICES (NPS)	71,460	103,125	59,354	103,929	
TOTAL PS & NPS	971,959	1,052,837	772,607	423,349	

ATTACHMENT B

Empire State Development
Moynihan Station Redev Corp
Capital Budget FY 2013-2014

	Actual Expense FYE 2012	Spending Plan FYE 2013	Projected Expense FYE 2013	Spending Plan FYE 2014	Comments
Acquisition Costs	0	0	0	0	
Design & Other Soft Costs	11,628,222	10,209,000	4,450,000	4,750,000	PA,SOM,PB,Sys,Th
Legal Costs	0	125,000	225,000	50,000	H&K
Insurance	1,541,766	500,000	895,275	150,000	
Demolition & Site Clearance	3,015	0	0	0	
Construction Costs	15,668	42,257,000	27,750,000	75,750,000	GC,CM,Amtrak
Other Misc. Costs	0	0	0	0	
Total Capital	13,188,670	53,091,000	33,320,275	80,700,000	

EXHIBIT:

**CONTRACT SUMMARY/CONTRACT STATUS REPORT
OPERATING/CAPITAL SPENDING BY CONTRACT
MOYNIHAN STATION DEVELOPMENT CORPORATION (MSDC)**

Vendor Name	Contract Amount	Spending Plan FY 2013-2014		12/31/2012 Balance	Spent thru 12/31/12	Execution Date	Anticipated Completion Date	Justification of Continuation	Funding Source & Status
		Operating \$	Capital \$						
ACTIVE MULTI-YEAR CONTRACTS TO BE CONTINUED IN FY 13/14:									
Holland & Knight, LLP	750,000			45,058	704,942	6/29/2010	12/31/2016	Continuing services related to Phase 1 construction. Contract will be amended.	FRA/PANYNJ
Konica Minolta Business Solutions	16,320			15,190	1,130	9/1/2011	2/11/2016	Required IT.	FRA
National Railroad Passenger Corp. (AMTRAK)	1,742,162			1,742,162	0	7/11/2011	12/31/2016		FRA
National Railroad Passenger Corp. (AMTRAK)	33,000,000			29,426,870	3,573,130	6/26/2012	12/31/2021		FRA
P. B. Americas	3,435,443			1,426,331	2,009,112	12/23/2010	12/31/2016		FRA
Port Authority of NY & NJ	4,500,000			3,641,715	858,285	7/11/2011	12/31/2016		FRA, PANYNJ, MTA
Skanska	147,750,000			140,609,846	7,140,154	6/13/2012	12/31/2016		FRA
Skidmore, Owings, Merrill LLP	12,290,604			5,346,840	6,943,764	2/22/2011	12/31/2016		FRA
ST.A. Joint Venture	19,921,743			17,046,916	2,874,827	11/9/2011	12/31/2016		FRA, PANYNJ, MTA
Sysira Engineering Inc.	4,039,312			1,778,093	2,261,219	2/1/2011	12/31/2016		FRA, PANYNJ, MTA
Thacher Associates LLC	1,825,000			1,825,000	0	10/12/2012	12/31/2016		FRA, PANYNJ, MTA

EXHIBIT:

**CONTRACT SUMMARY/CONTRACT STATUS REPORT
OPERATING/CAPITAL SPENDING BY CONTRACT
MOYNIHAN STATION DEVELOPMENT CORPORATION (MSDC)**

Vendor Name	Contract Amount	Spent thru 12/31/12	12/31/2012 Balance	Spending Plan FY 2013-2014		Scope of Work	Execution Date	Anticipated Completion Date	Justification of Continuation	Funding Source & Status
				Operating \$	Capital \$					
URS Corporation	7,682,992	7,437,517	245,475			Provide owner's representative services to Moynihan Station Development Corporation which includes pre-construction, construction oversight, and project management services with regards to the redevelopment of the J.A. Farley Building.	5/15/2000	12/31/2013	Consultation relating to Phase 2 efforts.	FDA, PARTN, MTA
Subtotal: Active Contracts	\$236,953,576	\$33,804,080	\$203,149,496	\$0	\$53,184,500					

ATTACHMENT C

Empire State Development
James A. Farley Building
Capital Budget FY 2013-14

	Actual Expense FYE 2012	Spending Plan FYE 2013	Projected Expense FYE 2013	Spending Plan FYE 2014	Comments
Acquisition Costs	0	0	46,000	500,000	mortgage related
Design & Other Soft Costs	956,490	250,000	125,000	50,000	WSP, URS
Legal Costs	422,037	625,000	285,000	475,000	Bryan Cave, Kramer
Property Mgmt/Maintenance	4,112,379	4,500,000	4,300,000	4,800,000	OGS
Insurance	727,548	750,000	750,000	776,276	Chubb/Affiliated FV
Demolition & Site Clearance	474,988	0	0	0	
Construction Costs	5,254,280	1,283,500	550,000	600,000	water tank
Other Misc. Costs	0	213,000	800,000	0	USPS Settlement
Contingency/Capital Reserve				598,724	
Total Capital	11,947,722	7,621,500	6,856,000	7,800,000	

EXHIBIT:

**CONTRACT SUMMARY/CONTRACT STATUS REPORT
OPERATING/CAPITAL SPENDING BY CONTRACT
MOYNIHAN STATION DEVELOPMENT CORPORATION (J.A Farley Building)**

Vendor Name	Contract Amount	Spent thru 12/31/12	12/31/2012 Balance	Spending Plan FY 2013-2014 Operating \$	Capital \$	Scope of Work	Execution Date	Anticipated Completion Date	Justification of Continuation	Funding Source & Status
ACTIVE MULTI-YEAR CONTRACTS TO BE CONTINUED IN FY 13/14:										
Bryan Cave LLP	5,462,193	5,044,544	417,649			Provide legal services to the Empire State Development Corporation with respect to the acquisition of the J.A. Farley Building.	4/18/2003	12/31/2014	Legal services related to the sale of Additional Farley TDRs.	PANYNJ
Jerome Haimis Realty, Inc.	256,400	191,300	65,100		125,000.00	Provide appraisal services in connection with the valuation as well as the Empire State Development Corporation's existing mortgage on the J.A. Farley Building.	8/28/2007	12/31/2015	Appraisal services relating to the Farley mortgage. Contract amended. See below.	PANYNJ
JFD Sales Consulting Services	45,000	0	45,000			Provide general contract services on standby basis. Services include miscellaneous interior carpentry services, floor repairs, painting, ceiling tile replacement, and minor plumbing and electrical repairs at the J.A. Farley Building.	5/6/2012	5/29/2014	Stand by maintenance.	PANYNJ
Kramer Levin Nattalis & Frankel LLP	750,000	124,740	625,260		50,000.00	Provide legal advice and assistance with respect to a proposed expansion in the scope of the Moynihan Station Civic and Land Use Improvement project, which includes but is not limited to real estate matters and litigation.	2/15/2012	12/31/2014	Legal services relating to Phase 2.	MSDC
Office of General Services (OGS)	21,927,658	20,179,842	1,747,816		350,000.00	Provide building management services and act as building manager for the acquired J.A. Farley Building.	8/24/2007	See anticipated contracts below	Continuing as building manager. Contract being amended. See below.	PANYNJ
Washington Square Partners	1,600,000	1,270,826	329,174		25,000.00	Provide real estate development and financial consulting services in connection with a potential expanded Moynihan Station Development Project.	11/27/2007	12/31/2014	Continuing financial advisory and real estate advisory services, relating to Phase 2.	MSDC
Subtotal: Active Contracts	\$30,041,251	\$26,811,252	\$3,229,999	\$0	\$550,000					

ITEM 4

FOR CONSIDERATION

March 27, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization for the Moynihan Station Development Corporation (“MSDC”) to Award the Construction Contract for the Connecting Corridor to Skanska USA Civil Northeast, Inc.

BACKGROUND

The Moynihan Station Project will build a new intercity train hall for Amtrak within the James A. Farley Post Office Building (“Farley Building”). The Project is progressing in phases.

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

Phase 1 consists of three sub-projects:

- West End Concourse Expansion and related Railroad work;
- Emergency Platform Ventilation System;
- Connecting Corridor Improvement and Subway Entrance Relocation work.

As part of the Connecting Corridor Improvement and Subway Entrance Relocation work, the Connecting Corridor between Penn Station and the West End Concourse will be substantially widened and improved. It will be reconfigured to be compliant with the Americans with Disabilities Act (the “ADA”). The Connecting Corridor will remain under the control of the Metropolitan Transportation Authority (“MTA”), and the proposed improvements will be closely coordinated with the MTA and the New York City Transit Authority (“NYCTA”).

In addition, new stairs, which meet NYCTA requirements, will be constructed from the sidewalk to the 8th Avenue Subway mezzanine. The new stairs will provide easier access to the subway station below and will allow improved pedestrian flow above at the sidewalk level.

MSDC issued construction drawings for the Connecting Corridor on January 22, 2013 for potential bidders. These construction drawings were reviewed and approved in advance by the Federal Railroad Administration. A pre-bid conference was held on January 30, 2013.

Bidders were requested to submit lump sum prices.

MSDC received bids on February 27, 2013 from four firms: Skanska USA Civil Northeast, Inc.; Paul J. Scariano; Yonkers Contracting Co., and D'Onofrio General Contractors.

The following lump sum bids were submitted for the Connecting Corridor:

Skanska USA Civil Northeast, Inc.	\$15,915,000
Paul J. Scariano	\$18,638,500
Yonkers Contracting Co.	\$21,911,000
D'Onofrio General Contractors	\$23,297,000

The Engineer's Estimate for this scope of work was \$19,390,295.

The low-bid of \$15,915,000 from Skanska USA Civil Northeast, Inc. was approximately 18% lower than the Engineer's Estimate.

A low bid interview was held with Skanska on March 1st to review Skanska's work plan, staffing plan and bid breakdown. Skanska's bid package was further evaluated by the Port Authority of New York and New Jersey ("PANYNJ") and the MSDC construction manager, STA, to determine the feasibility of the work plan.

Based on the review of Skanska's work plan and the low-bid interview, MSDC and PANYNJ believe that Skanska understands the scope of work, the milestones, the deliverables and the terms of the contract. Skanska's deviation from the Engineer's Estimate is explainable by the fact that Skanska is already mobilized for the West End Concourse Expansion work and has a lower amount budgeted for General Conditions.

In addition, the D/M/WBE participation plan was reviewed by ESD/MSDC, and Port Authority staff undertook a responsibility review. Skanska identified MWBE/DBE subcontractors totaling 20.296% of the total dollar value of the construction contract.

With the satisfactory completion of the bid review described above and a bid that is within the available funding for the project, MSDC staff recommends that the Connecting Corridor construction contract, in the amount of \$15,915,000 be awarded to Skanska.

FUNDING

Funding for this construction contract will come from a grant from Federal High Speed Intercity and Passenger Rail (HSIPR) Program administered by the Federal Railroad Administration (FRA). With a 10% contingency of \$1,591,500, the total budget for this contract is \$17,506,500.

Source	Amount
Federal – HSIPR	\$17,506,500

RESPONSIBLE PARTIES

Pursuant to State Finance Law Section 139-j and 139-k and MSDC’s policy related thereto, staff has (a) considered the ability of Skanska USA Civil Northeast, Inc. to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff finds Skanska USA Civil Northeast, Inc. to be responsible.

AFFIRMATIVE ACTION

MSDC’s D/M/WBE Program Plan, approved by the FRA, will apply to this contract.

Skanska USA Civil Northeast, Inc. will be required to use its best efforts to achieve a Minority Business Enterprise participation goal of 12% and a Women Business Enterprise participation goal of 8% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the construction work related to the Project. This is a comprehensive goal for all areas of the project (i.e., professional, construction and purchasing of supplies), and therefore the overall goal for the project is 20%. MSDC will also encourage DBE participation, but there is no numerical goal for DBEs.

ENVIRONMENTAL REVIEW

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.

REQUESTED ACTIONS

The Directors are requested to authorize the Corporation to award the construction contract for the Connecting Corridor in the amount of \$15,915,000 with a 10% contingency of \$1,591,500 for a total amount of \$17,506,500 to Skanska USA Civil Northeast Inc., as set forth in these materials.

RECOMMENDATION

Based on the foregoing, MSDC staff recommends approval of the requested actions.

Pursuant to the Board-approved consulting services agreement between MSDC and PANYNJ, the Port Authority has submitted to MSDC its Letter of Recommendation to Award the Construction Contract.

ATTACHMENTS

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

MEMORANDUM

Engineering Department

To: Michael Evans, President, Moynihan Station Development Corporation
Andrew Lynn, Director, Planning & Regional Development

From: Bruno Signorelli, P.E.
Engineer of Construction
Moynihan Station

Date: March 1, 2013

Subject: MOYNIHAN STATION – PHASE 1: CONNECTING CORRIDOR
RECOMMENDATION TO AWARD CONSTRUCTION CONTRACT

Copy To: C. Burke, A. Lynn, A. Martinez, M. Pirozzi

The Port Authority recommends award of a contract for Phase 1: Connecting Corridor, of the Moynihan Station Redevelopment to Skanska USA Civil Northeast, the lowest responsive bidder in the amount of \$15,915,000. It is the opinion of the Port Authority that their bid submission conforms to the requirements outlined in the bid advertisement.

The Contract was publically advertised on January 22, 2013 and a total of four bids were received by MSDC on February 27, 2013.

The bid packages were evaluated by the Port Authority to determine if the bids were complete and to deem the Contractor responsive. Skanska USA Civil Northeast, the apparent low bidder was within nineteen percent of the Engineer's estimate of \$19,390,295 and within eighteen percent of the second lowest bidder, PJS.

A low bid meeting was held with Skanska on March 1, 2013. Skanska's price for General Conditions was exceptionally low since they are already mobilized on site for the West End Concourse Contract and are familiar with the site conditions.

It is therefore my recommendation the Contract for the Connecting Corridor be awarded to Skanska USA Civil, the lowest responsible bidder, in the amount of \$15,915,000.



Bruno Signorelli, P.E.
Engineer of Construction – Moynihan Station Redevelopment

March 27, 2013

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization for the Moynihan Station Development Corporation (“MSDC”) to Award the Construction Contract for the Connecting Corridor to Skanska USA Civil Northeast, Inc.

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 \$15,915,000 and a 10% contingency (totaling \$17,506,500) with Skanska USA Civil Northeast, Inc. for the construction of the Connecting Corridor 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.

* * *

ITEM 5

FOR CONSIDERATION

March 27, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization for Moynihan Station Development Corporation (“MSDC”) to Purchase an Owner’s Interest General Liability Policy for the Connecting Corridor Work of Phase 1 of the Moynihan Station Project

BACKGROUND

In January 2013, MSDC issued construction drawings for the Connecting Corridor portion of Phase 1 of the Moynihan Station Project.

The construction contract for the Connecting Corridor work requires that the selected contractor secure General Liability coverage on an occurrence basis with limits of liability of not less than \$25 million dollars for each occurrence, combined single limit, for bodily injury, (including disease or death), personal injury and property damage (including loss of use) liability and \$25 million annual Project-specific aggregate.

MSDC, Empire State Development (“ESD”), the Port Authority of New York and New Jersey, the Metropolitan Transportation Authority and its affiliated entities, Amtrak, New Jersey Transit, the New York State Department of Transportation, and the City of New York will be named as “Additional Insured.”

The selected contractor may comply with this General Liability requirement through the implementation and management of a Contractor Controlled Insurance Program (“CCIP”).

In addition to this coverage, MSDC seeks authorization to procure an Owner’s Interest General Liability Policy for the Connecting Corridor work.

The MSDC Board previously authorized MSDC to purchase an Owner’s Interest General Liability Policy to cover the West End Concourse Expansion work being carried out by Skanska. This policy is in place, with \$10,000,000 in coverage per occurrence, and a \$12,000,000 aggregate limit provided by Colony, Mt. Hawley and Axis.

The new Owner's Interest policy will be separate from the policy purchased to cover the WEC Expansion work, as the Connecting Corridor work is being carried out under a separate contract and encompasses a different and independent Scope of Work.

This policy will provide MSDC excess coverage above and beyond the \$25 million limit that the selected contractor for the Connecting Corridor work is required to secure. In addition, the Owner's Interest policy will provide coverage for MSDC in certain circumstances that may include, but are not limited to, the following:

- Accidents that result from the negligence of one or more MSDC employees independent of the operations of the contractor;
- Incidents relating to the Connecting Corridor work and work area in which the contractor is not involved.

Cool Insuring Agency ("Cool"), the ESD and MSDC insurance broker, was asked to solicit quotes for the Owner's Interest General Liability policy for the Connecting Corridor work. Cool approached various carriers directly and through a wholesale relationship. Colony and Mt. Hawley provided the best value for MSDC in terms of price and the terms of the Owner's Interest policy. It is important to note that these two insurance carriers are the same ones writing a portion of the Owners Interest Liability Policy for MSDC for the West End Concourse Expansion work.

The proposed Owner's Interest Policy for the Connecting Corridor work is \$6,000,000 per occurrence. This coverage would be provided with a \$1,000,000 per occurrence, \$2,000,000 aggregate limit from Colony Insurance Company and a \$5,000,000 per occurrence, \$5,000,000 aggregate limit Excess Policy from Mt. Hawley. The details of the policy coverage and premiums are detailed below.

Owners Interest General Liability Coverage - Colony Insurance Company

General Aggregate Limit:	\$2,000,000
Products/Completed Operations Limit:	\$1,000,000
Personal and Advertising Injury Limit:	\$1,000,000
Each Occurrence Limit:	\$1,000,000
Damage to Premises Rented to MSDC Limit:	\$50,000
Deductible:	\$10,000
Term Premium:	\$71,075.00
General Liability Program Tax/Fee:	\$3,700.85
Total	\$74,775.85

Owners Interest Excess Liability Coverage -Mt. Hawley Insurance Company

General Aggregate Limit:	\$5,000,000
Products/Completed Operations Limit:	\$5,000,000
Each Occurrence Limit:	\$5,000,000
Term Premium:	\$42,000.00
Excess Liability Tax/Fee:	\$1,596.00
Total	\$43,596.00

Premiums are based on a total construction cost of \$15,000,000. An additional premium of **\$3,375.00** is required to include terrorism coverage, which is recommended.

The estimated combined total cost of the Owner’s Interest policy for the Connecting Corridor is **\$121,746.85** for the life of the Connecting Corridor project.

These policies would be effective for the period of binding until 12/31/2015.

The General Liability and Excess Liability coverage is subject to receipt of contract with the selected General Contractor for the Connecting Corridor work and compliance with all noted documents and certificates of insurance.

ESTIMATED COST OF SERVICES

The estimated cost of coverage is \$121,747 with a 10% contingency of \$12,175 for an aggregate of \$133,922.

FUNDING

Funds for the purchase of this policy will come from grant agreements with the Federal Railroad Administration for project management, insurance and risk management costs associated with Phase 1 of the Moynihan Station Project.

ENVIRONMENTAL REVIEW

ESD staff, on behalf of MSDC, has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations for New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

RESPONSIBLE PARTIES

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; (a) considered the ability of Cool Insuring Agency, Inc., Colony Insurance Company and Mt. Hawley Insurance Company to perform the services provided for in the proposed agreement; 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 the Cool Insuring Agency, Inc., Colony Insurance Company and Mt. Hawley Insurance Company to be responsible.

AFFIRMATIVE ACTION

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

REQUESTED ACTION

The Directors are requested to authorize the Corporation to procure an Owner's Interest General Liability policy with a \$6,000,000 limit per occurrence as detailed above.

RECOMMENDATIONS

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

ATTACHMENTS

Resolution

March 27, 2013

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Purchase Owner’s Interest General Liability Policy for the Connecting Corridor Work of Phase 1 of the Moynihan Station Project and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Colony Insurance Company and Mt. Hawley Insurance Company 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 the Connecting Corridor Work of Phase 1 of the Moynihan Station Project for an amount not exceed \$121,747 with a 10% contingency of \$12,175 for an aggregate of \$133,922 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.

* * *

ITEM 6

FOR CONSIDERATION

March 27, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization for Moynihan Station Development Corporation (MSDC) to Enter into a Letter Agreement with Consolidated Edison Company of New York, Inc. (Con Edison) with Regard to Obtaining a Permit from Con Edison for Work That Must be Performed on Con Edison Facilities as Part of the Connecting Corridor Improvement Project

BACKGROUND

In January 2013, MSDC issued construction drawings for the Connecting Corridor portion of Phase 1 of the Moynihan Station Project.

As part of the Connecting Corridor work, the Connecting Corridor between Penn Station and the West End Concourse will be substantially widened and improved. It will be reconfigured to be compliant with the Americans with Disabilities Act (the "ADA"). The Connecting Corridor will remain under the control of the Metropolitan Transportation Authority ("MTA"), and the proposed improvements will be closely coordinated with the MTA and New York City Transit Authority ("NYCTA").

In addition, new stairs, which meet NYCTA requirements, will be constructed from the sidewalk to the 8th Avenue Subway mezzanine. The new stairs will provide easier access to the subway station below and will allow improved pedestrian flow above at the sidewalk level.

The Connecting Corridor construction project will impact Con Edison facilities and require certain utility relocations.

Con Edison staff attended design meetings conducted by MSDC and the Port Authority of New York and New Jersey ("PANYNJ") relating to the Connecting Corridor project. In addition, Con Edison staff provided feedback on the Connecting Corridor design package and construction drawings. Following a collective review from its electric, gas, and steam departments, Con

Edison concurs, in concept, to the design of the proposed Con Edison utility facility relocations as detailed in the construction drawings issued to bidders in January 2013.

As a result of the anticipated impact of the Connecting Corridor construction project on Con Edison facilities, Con Edison requests that MSDC enter into a Letter Agreement granting MSDC a permit to do the work and specifying the terms under which the selected contractor for this work will undertake the necessary utility work. In addition, it is expected that Con Edison or its own contractors will be required to self-perform certain work necessitated by the Connecting Corridor construction project and pursuant to this permit. This Letter Agreement will provide for the direct reimbursement of Con Edison by MSDC for the cost of such work performed by Con Edison or its contractors.

The key terms of the Letter Agreement are as follows:

- MSDC will be granted a permit to perform the work on the Con Edison facilities that are affected by the Project as described in the Letter Agreement;
- MSDC will conduct its Project work pursuant to licenses granted to it by MTA/NYCTA and the permit granted by Con Edison; at the conclusion of the Project work, MSDC will deliver the Improvements to NYCTA/MTA; and Con Edison and will have no rights with respect to the Project site, the Improvements, or the property on which the Improvements are located;
- MSDC, its contractors, and Con Edison agree to immediately meet and coordinate any required re-alignment at the time that actual site conditions are encountered that require changes to the proposed Con Edison facilities relocations shown in the proposed construction drawings;
- Any changes to the relocation of Con Edison facilities that deviate from the proposed construction drawings require the approval of Con Edison;
- MSDC and its contractors, will provide, install, and maintain (until delivery of the project to MTA/NYCTA or the work to Con Edison, as the case may be), all Con Edison subsurface facilities that are to be relocated and all facilities that are to be supported and protected in place, at no cost to Con Edison;
- MSDC agrees that any Con Edison facilities that are damaged by MSDC or its contractors during construction as a result of the Project work will be required to be repaired and/or rebuilt in accordance with the reasonable directions of Con Edison Public Improvement Construction Management group at no cost to Con Edison;
- MSDC and its contractors will indemnify and hold harmless Con Edison for all personal injuries, and for damages to Con Edison facilities, to the extent permitted by law, resulting from any negligence, operations and activities of MSDC and its contractors;
- MSDC will require that its contractors maintain general liability insurance coverage specified in MSDC's contract documents which will name Con Edison as an additional insured for the duration of the Project;
- MSDC will require its contractors to perform all Con Edison utility re-location and support and protection work in accordance with all Federal, State of New York, City of

New York and local laws, rules, and regulations, including but not limited to those relating to the Occupational Safety and Health Administration (“OSHA”) and New York State Labor Law;

- Any remediation of environmental issues that affect Con Edison facilities will be coordinated between MSDC and Con Edison;
- MSDC and its contractors will provide access to Con Edison field representatives to all the work areas to inspect the relocated and supported Con Edison facilities, including for final inspection and acceptance of all relocated and supported facilities prior to the delivery of the Improvements to the NYCTA/MTA;
- All work required for the relocated Con Edison facilities, which is performed by Con Edison employees, or its contractors will be reimbursed by MSDC under the accommodation billing rates that have been agreed to by Con Edison and the NYCTA/MTA.

ESTIMATED COST

The cost of utility relocation work carried out by the selected MSDC contractor for the Connecting Corridor construction project will be included in the overall amount of the construction contract for that work, which will be authorized by the MSDC Board.

In addition, MSDC and PANYNJ estimate that Con Edison will self-perform approximately \$335,044 worth of work, which will be directly reimbursed by MSDC. With a 10% contingency, the total cost of this work is estimated at \$368,549. By entering into this agreement, however, MSDC commits to paying the full cost of the work performed by Con Edison. MSDC staff will return to the MSDC Board if costs exceed the projected amount. A cost estimate provided by Con Edison is attached to the materials.

FUNDING

Funds for this work will come from grant agreements with the Federal Railroad Administration for construction of Phase 1 of the Moynihan Station Project.

ENVIRONMENTAL REVIEW

ESD, as lead agency on behalf of MSDC, conducted an environmental review of the project pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. This review addressed all aspects of construction and operation of Phase I of the project, therefore, no further environmental review is necessary in connection with this authorization.

RESPONSIBLE PARTIES

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered Con Edison's ability to perform the services provided for in the proposed agreement; 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 Con Edison to be responsible.

AFFIRMATIVE ACTIVE

For work carried out by the MSDC general contractor, MSDC's DBE/MBE/WBE Program Plan, as approved by the FRA, will apply.

Skanska USA Civil Northeast, Inc. will be required to use their best efforts to achieve a Minority Business Enterprise participation goal of 12% and a Women Business Enterprise participation goal of 8% 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.

For work carried out by Con Edison or its own contractors, Con Edison's non-discrimination, diversity and Equal Employment Opportunity policies will apply.

REQUESTED ACTIONS

The Directors are requested to authorize the Corporation to enter into a Letter Agreement with Con Edison specifying the terms under which, (a) Con Edison will grant to MSDC a permit to perform the work on the Con Edison facilities, and (b) MSDC and its contractor will conduct work impacting Con Edison property and facilities as part of the construction of the Connecting Corridor improvements.

This action will include authorization for MSDC to directly reimburse Con Edison for the cost of work Con Edison or its own contractors perform, which is estimated at \$335,044 with a 10% contingency of \$33,505, for an aggregate estimated cost of \$368,549. A cost estimate for this work is attached.

RECOMMENDATIONS

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

ATTACHMENTS

Cost Estimate for Con Edison Services – December 03, 2012
Resolution

March 27, 2013

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization for MSDC to Enter Into a Letter Agreement with Consolidated Edison Company of New York, Inc. (“Con Edison”) with Regard to Obtaining a Permit from Con Edison for Work that Must be Performed on Con Edison Facilities as Part of the Connecting Corridor Improvement Project

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 Consolidated Edison Company of New York, Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a Letter Agreement with Consolidated Edison Company of New York, Inc. on the terms and conditions as set forth in the Materials; and be it further

RESOLVED, that MSDC is authorized to reimburse Con Edison for work performed by Con Edison and its own contractors, which is estimated to cost \$335,044 with a 10% contingency of \$33,505 for an aggregate total estimated cost of \$368,549, 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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ITEM 7

FOR CONSIDERATION

March 27, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization for the Moynihan Station Development Corporation (“MSDC”) to Amend Contract for Legal Services Related to Phase 1 of the Moynihan Station Project; Authorization to Take Related Actions

BACKGROUND

In April 2010, ESD Directors authorized a contract for \$750,000 with Holland & Knight LLP (“H&K”) to provide legal services for Phase 1 of the Moynihan Station Project.

H&K has since represented MSDC through the negotiation of numerous legal documents relating to Phase 1, including agreements with the Federal Railroad Administration; National Passenger Railroad Corporation (“Amtrak”); Metropolitan Transit Authority (including Long Island Railroad and New York City Transit); New Jersey Transit; and the Port Authority of New York and New Jersey (“PANYNJ”).

In addition, H&K worked with MSDC and PANYNJ on the development of the Phase 1 construction contracts, force account agreements, construction license agreements, and the insurance and risk management regime for the Project.

H&K is currently involved in negotiations with Amtrak and the MTA regarding certain long-term easements and final acceptance provisions for Phase 1 work. In addition, H&K’s services may be required relating to issues involving the Phase 1 construction contracts over the life of these contracts, as H&K was the legal counsel for their development.

On October 12, 2012 the MSDC Directors approved a list of counsels pre-qualified by ESD General Counsel, allowing for the selection of counsel from this list and approval of individual retention contracts without need for further public solicitation. ESD pre-qualified this list of counsels, for itself and on behalf of its subsidiaries, in selected areas of expertise, including law firms specializing in the areas of real estate, land use, and related litigation, in order to permit ESD and its subsidiaries to respond to project needs expeditiously, while having available the benefits of a broad solicitation of qualified outside law firms. Holland & Knight LLP was included in this pre-qualified list.

H&K is a full-service firm with extensive experience in complex real estate and governmental transactions. H&K has satisfactorily performed legal services for MSDC and has the expertise and the staff to accomplish the work required to continue advancing Phase 1 of the Moynihan Station Project. H&K is also willing to work within ESDC's "Maximum Rate Structure for Outside Counsel."

CONTRACT SUMMARY

- Consultant: Holland & Knight LLP

- Scope of Services: In April 2010, ESD Directors authorized the retention of Holland & Knight LLP, to provide 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.

- Contract Amount: The current limit is \$750,000, with a \$28,000 balance remaining. The amendment will increase the contract amount by \$150,000, to a new total contract amount of \$900,000.

ENVIRONMENTAL REVIEW

ESD staff, on behalf of MSDC, has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

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 agreement; 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 goal during construction.

REQUESTED ACTION

The Directors are requested to authorize the Corporation to amend the existing contract with Holland & Knight for legal services to bring the total contract amount to \$900,000.

RECOMMENDATION

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

ATTACHMENTS

Resolution

March 27, 2013

New York (New York County) – Moynihan Station Civic and Land Use Improvement Project --
Authorization to Amend the Contract with Holland & Knight LLP for Legal Services Relating to
Phase 1 of the Moynihan Station Project; 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 in accordance with the materials, the Corporation is hereby authorized to amend the existing contract for legal services relating to Phase 1 of the Moynihan Station Project with Holland & Knight LLP in order to increase the total contract amount by \$150,000 to a new total amount of \$900,000, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President, 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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ITEM 8

FOR CONSIDERATION

March 27, 2013

TO: The Directors

FROM: Michael Evans

SUBJECT: New York (New York County) - Moynihan Station Civic and Land Use Improvement Project - Insurance for the James A. Farley Post Office Building and Annex

REQUEST FOR: Authorization to Place Insurance Policies with Affiliated Factory Mutual and the Chubb Group of Insurance Companies; and to Take Related Actions

BACKGROUND

In March 2007, Empire State Development ("ESD") acquired the James A. Farley Post Office Building and Annex ("Farley") in Manhattan (bounded by 31st and 33rd Streets and 8th and 9th Avenues) for use in the Moynihan Station Civic and Land Use Improvement Project.

On Farley there is Property coverage, as well as a Commercial General Liability policy and a \$25,000,000 Umbrella Liability policy. These policies are separate and distinct from the coverage in place for Phase 1 of the re-development project.

For the coming FY2013-14, renewals or replacements must be secured for: (a) Real Property insurance, for financial losses in the event of significant physical damage to Farley; and (b) General Liability insurance, for personal injury and property damage that may result from activity at Farley.

Since 2010, MSDC has been placed coverage through Cool Insuring Agency, Inc. ("Cool")—ESD's approved broker. Annually, Cool has provided premium quotations for Commercial General and Excess Liability Insurance and for Real Property and Excess Property Insurance for Farley after seeking premium quotes from a wide range of insurance carriers. The following is a summary of Cool's efforts for this year's renewal.

For the expiring 2012/13 term, Property coverage is split between two carriers – One Beacon insures the first \$100,000,000 and Travelers Insurance insures the next \$150,000,000, resulting in a total property limit of \$250,000,000. The Chubb Group of Insurance Companies writes both the primary General Liability as well as the \$25,000,000 Umbrella policy.

Since last year's renewal, One Beacon Insurance made a corporate decision to exit the Commercial Property market entirely, so they are not a viable option for the FY2013-14 renewal for the Farley Building. The commercial insurance market has "tightened" over the past twelve months, which means insurers have become more conservative in both the pricing they provide and the terms and conditions of coverage they offer.

In light of a tightening market and One Beacon's decision to no longer write Commercial Property coverage, Cool solicited quotations from the following 14 insurance carriers for the FY2013-14 renewal:

- Affiliated Factory Mutual ("Affiliated FM")
- Lexington Insurance
- Chubb Group
- Zurich Insurance
- Travelers Insurance
- CNA Insurance
- Great American Insurance
- Liberty Insurance
- Allianz Insurance
- Chartis Insurance
- Hanover Insurance
- Harleysville Insurance
- Hartford Insurance
- Philadelphia Insurance

All the carriers they approached are licensed in New York State and have A.M. Best ratings of A- or better. All but a few of the carriers approached declined to provide a quotation. The primary reasons cited were a lack of underwriting appetite for a building in the heart of midtown across the street from Penn Station/Madison Square Garden, concerns with the integrity of the building's roof, and the very high limit of coverage needed on the building (\$250,000,000).

Affiliated FM, however, provided a very aggressive quote for commercial property coverage — actually 1.4% less than the expiring premium. Affiliated FM is renowned as a market of choice for high value, single location risks. It has the underwriting appetite for more difficult placements and tremendous capacity. As such, it is able to provide coverage on the entire \$250,000,000 limit.

No one carrier aside from Affiliated FM is willing to write the entire \$250,000,000. Cool had indications from three other carriers of their willingness to provide coverage for part of the \$250,000,000 limit. The other carriers willing to move forward were Travelers Insurance (already the carrier on the top \$150,000,000 layer), Lexington Insurance, and Zurich Insurance. The verbal indications from Lexington and Zurich were that their quotes would be significantly more costly than the quote received from Affiliated FM and subject to a formal loss control

inspection. With Affiliated FM's final quote much lower than the verbal indications of Lexington and Zurich, Cool did not have Lexington and Zurich formalize their quotes unnecessarily.

Based on the indications from the solicited carriers, Cool recommends MSDC continue to place its General Liability and Umbrella coverage through the Chubb Group. Chubb's overall pricing is up versus the expiring policy, but it is still more competitive than what the other carriers indicated that they could provide. As is the case on the Property coverage, the underwriting appetite for midtown Manhattan exposure is somewhat limited and the pricing is rather conservative.

Below is a comparative summary of the premiums for MSDC's commercial insurance program:

	FY2012-13	FY2013-14
Property	\$573,630	\$565,704
General/Umbrella Liability	\$175,803	\$210,572
TOTAL	\$749,433	\$776,276

The overall increase is 3.6%, which in light of the current state of the market is on the lower end of the range of increases commercial insurance buyers are facing as they renew their programs in 2013.

FUNDING

Building insurance for FY2013-14 will be funded out of funds provided by the Port Authority of New York and New Jersey ("PANYNJ").

ENVIRONMENTAL REVIEW

ESD staff, on behalf of MSDC, has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

AFFIRMATION ACTION

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

RESPONSIBLE PARTY

Pursuant to State Finance Law Sections 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered the ability of Cool Insuring Agency, Inc., the Chubb Group of Insurance Companies, and Affiliated Factory Mutual 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 Cool Insuring Agency, Inc., the Chubb Group of Insurance Companies, and Affiliated Factory Mutual to be responsible.

REQUESTED ACTIONS

The Directors are requested to: (1) authorize procurement of: (a) Commercial General Liability Insurance and Umbrella Coverage with the Chubb Group; (b) Real Property Insurance with and Affiliated Factory Mutual, for April 1, 2013 through March 31, 2014 at a total annual premium of \$776,276; (2) approve, ratify, and confirm any and all actions previously taken on behalf, or in the name, of ESD/MSDC in connection with this matter; and (3) authorize the taking of related actions.

RECOMMENDATION

Based on the foregoing, MSDC staff recommends approval of the requested actions.

ATTACHMENTS

Resolution

March 27, 2013

New York (New York County) - Moynihan Station Civic and Land Use Improvement Project - Insurance for the James A. Farley Post Office Building and Annex - Authorization to Place Insurance Policies with Affiliated Factory Mutual and the Chubb Group of Insurance Companies; and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the "Materials"), the Corporation hereby finds Cool Insuring Agency, Inc., Affiliated Factory Mutual and the Chubb Group of Insurance Companies; to be responsible; and be it further

RESOLVED that, in accordance with the Materials, the President or Other Officer of the Corporation, or their designee(s), are hereby authorized, in the name and on behalf of MSDC, to enter into all contracts, agreements, and instruments necessary or appropriate in connection with the placement of insurance for the James A. Farley Post Office Building and Annex with Affiliated Factory Mutual and the Chubb Group; and be it further

RESOLVED that the total annual cost of such insurance shall not exceed \$776,276; and be it further

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

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