

# **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 –37<sup>th</sup> Floor  
New York, New York 10017

**Wednesday**

**November 18, 2015 – 2:30 p.m.**

### **REVISED PROPOSED AGENDA**

#### **CORPORATE ACTION**

1. Approval of the Minutes of the July 13, 2015 Directors' Meeting
2. Authorization to Increase the FY2015-16 Operating Budget for Moynihan Station Development Corporation ("MSDC or the "Corporation") to Cover Additional Staffing

#### **FOR INFORMATION**

3. President's Report (Oral Report)

#### **FOR CONSIDERATION**

4. Authorization for Moynihan Station Development Corporation to Amend the Letter Agreement with Consolidated Edison Company of New York, Inc.
5. Authorization to Amend the Construction Contract with Skanska USA Civil Northeast, Inc. ("Skanska Civil") for the Connecting Corridor Sub-Project
6. Authorization to Amend the Contract with Skidmore, Owings & Merrill, LLP for Architectural, Engineering, Design, Development, and Related Services, and Authorization to Take Related Actions

#### **EXECUTIVE SESSION**

7. Integrity Monitor Report (Oral Report)

**MOYNIHAN STATION DEVELOPMENT CORPORATION**

**MEETING OF THE DIRECTORS**

**WEDNESDAY**

**November 18, 2015**

**2:30 p.m.**

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#### **EXECUTIVE SESSION**

7. Report on Real Estate Negotiations (Oral Report)

**ITEM 1**

**MOYNIHAN STATION DEVELOPMENT CORPORATION**

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

**July 13, 2015**

**MINUTES**

**In Attendance**

**Directors:**

Victor Mendez (Acting Chair) (via video conference)  
Gerrard Bushell  
James Patchett  
Mehul Patel  
Rebecca Reyes-Alicea (Sarah Feinberg designee)

**Present for the Empire  
State Development:**

Jonah Bruno, Press Secretary  
Joseph Chan, Executive Vice President – Real Estate Development  
Thomas Conoscenti, Director – Real Estate Dev. & Planning  
Richard Dorado, Senior Counsel  
Elizabeth Fine, Executive Vice President – Legal & General  
Counsel  
Carey Gabay, First Deputy General Counsel  
Nicole Jordan, Manager – Community Relations  
Maxwell Padden, Director – Subsidiary Finance  
Harold Rojas, Manager of Accounting  
Debbie Royce, Paralegal/Project Associate

**Present for the  
Moynihan Station**

**Development Corporation:**

Michael Evans, President  
Fred Bartoli, Project Manager  
Thelma Washington, Executive Secretary

**Present for FRA/USDOT:**

Vincent White, USDOT/FRA (via video conference)  
Joe Peraino, USDOT/FRA (via video conference)  
Hilary Page, FRA Intern

**Also Attending:** Kelly Eustice, PANY&NJ  
Andrew Lynn  
Jacqueline McCarthy, PANY&NJ  
Bruno Signorelli, PANY&NJ

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order by Victor Mendez at approximately 2:40 p.m. Chairman Mendez noted for the record that the meeting was being webcast. He also noted for the record the Corporation’s policy to welcome public comments on the items on the current Agenda. Chairman Mendez briefly reviewed the protocol for comments.

Before beginning with the substantive portion of the meeting, Chairman Mendez asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the Agenda, and if so, he asked that the Director make the appropriate disclosure on the record and recuse themselves from any discussion or vote with regard to any such items.

Chairman Mendez introduced the new Directors attending the meeting, Mehul Patel, COO and Chief of Staff at Empire State Development, Gerrard Bushell, President and CEO of the Dormitory Authority of the State of New York, and James Patchett, Chief of Staff to New York City’s Deputy Mayor of Economic Development, Alicia Glen. Chairman Mendez also mentioned Director Carolee Fink, Senior Advisor to the Mayor of the City of New York. Ms. Fink did not attend this meeting.

Next, Chairman Mendez requested a motion for approval of the meeting minutes of the May 4, 2015 Directors meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

227. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MAY 4, 2015 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

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RESOLVED, that the Minutes of the meeting of the Corporation held on May 4, 2015, are hereby approved and all actions taken by the Directors present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

\* \* \*

Chairman Mendez requested that Michael Evans present the next Agenda item, requesting ratification of actions requested at the May 4, 2015 Directors' meeting.

Mr. Evans explained to the Directors that they are being asked to ratify the actions taken on the following items adopted at the MSDC's May 4, 2015 Directors' meeting, due to fewer than the required number of Directors being present and voting at the meeting.

1. Minutes of the March 30, 2015 Director Meeting
2. Request for Authorization to Amend a Contract with New York State Office of General Services for Building Management Services at the James A. Farley Building and Annex in Manhattan
3. Request for Authorization to Fund Early Action Work (by Skidmore, Owings, Merrill ("SOM") and Skanska USA Civil Northeast, Inc. ("Skanska"))

Following Mr. Evans' presentation of the ratification items, Director Patchett asked Mr. Evans to provide some background on the item regarding funding of early action work by SOM and Skanska. Mr. Evans responded explaining that ESD renewed the mortgage on the Farley Building after consultation with the lender and approval by the Public Authorities Control Board, increasing the mortgage by \$37 million specifically for early action work. Mr. Evans continued, stating that this work in the Farley Building is required to advance to the next Phase of the Moynihan Project and this work would be required no matter what the Corporation decides to do with the building. He further explained that the objective in advancing this work would trim off up to a year of the overall construction time frame for the Project; and therefore save substantially on construction costs for Phase 2.

Following comments by the Directors, Chairman Mendez requested a motion for approval. Upon motion duly made and seconded, the Directors' unanimously voted to ratify the items presented at the Corporations' May 4, 2015 Directors' meeting.

Next, Chairman Mendez asked Mr. Evans to present his President's report. Mr. Evans briefed the Directors on the big milestone highlight of achieving Milestone 1 of Phase 1 which entailed complete enclosure of the West End Concourse, as well as, completion of all fireproofing and the steel structure. Mr. Evans asked Kelly Eustice, of the Port Authority, to give her progress report on Phase 1 construction since the last Directors' meeting.



Ms. Eustice reported that Milestone 1 of Phase 1 was completed on June 28, 2015. She reported on a couple of other milestones reached on the Project one, i.e. the exterior work, as well as, a new subway entrance which opened on June 1, 2015. She explained that the new subway entrance currently has temporary finishes however, it is anticipated that the permanent granite finishes will be installed sometime in the Spring. She continued reporting that the north half of the 8<sup>th</sup> Avenue steps' punch list will be completed this week and the south half of the 8<sup>th</sup> Avenue steps will be reinstalled over the next three (3) weeks. Ms. Eustice also reported on the South Plaza demolition stating that demolition has been completed and steel will be delivered and installed during the current week. She stated that the South Plaza should be completed by year end and she expects the North Plaza to be completed in the Spring.

Following Ms. Eustice's report, Director Patchett asked when Phase 1 is expected to be completed. Mr. Evans responded that Phase 1 is scheduled to be completed in August 2016 and the Project remains on schedule.

Director Patchett then asked for clarification on what was recently completed as reported by Ms. Eustice. Mr. Evans responded that the closure of the new Concourse had been recently completed.

Chairman Mendez commented on one of the highlights in Ms. Eustice's report regarding the fact that there are 200 people or more actually working which means the Project has been successful in putting people back to work.

Mr. Evans continued with his President's report informing the Directors' on the next Phase of the Project. He stated that approximately 75 percent of the construction drawings have been completed, substantial comments have been received from Amtrak and the Port Authority's Engineering Dept. on 50 percent of the drawings; and the architect and the Project team has incorporated the submissions into the next design phase.

Lastly, Mr. Evans noted that he and Sarah Saint-Amand were recently in Washington to meet with Ernst and Young, the financial advisors on the Project, US Dept. of Transportation's TIFIA and RRIF offices to discuss federal financing for the next phase of the Project.

Chairman Mendez requested that Mr. Evans present the next Agenda item, requesting authorization for the Corporation to extend the Project-Specific Professional Liability Insurance policy to cover Phase 2 design.

In his presentation, Mr. Evans explained to the Directors that they are being asked to authorize the Corporation to secure Professional Practice Liability ("PPL") coverage for the Project's design consultants and the early action work for Phase 2 which began earlier this summer. He explained what is being proposed is an extension of the current coverage for

Phase 1 work to Phase 2. He stated that this approach was developed in consultation with Empire State Development (“ESD”) and ESD’s insurance broker Willis Group Holdings Ltd. (“Willis”); and that Willis and the Phase 1 PPL carrier, Lexington Insurance Company, were able to negotiate an attractive rate for the next Phase of the Project.

Following a full presentation of the item Chairman Mendez requested a motion for approval. Upon motion duly made and seconded, the following resolution was unanimously adopted:

228. NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Extend the Project Specific Professional Liability Insurance for the Moynihan Station Project to Cover Phase 2
- 

BE IT RESOLVED, that in accordance with the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds the Lexington Insurance Company to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to extend the Project Specific Professional Liability Insurance Policy provided by Lexington Insurance Company to cover the design and professional services for Phase 2 of Moynihan Station at an overall price not to exceed \$3,321,600, inclusive of 3.8% surplus lines taxes and fees, and that \$1,307,880 will be payable immediately and \$2,013,720 will be payable only upon (A) the execution of a contract for construction management services for Phase 2, and (B) receipt of sufficient appropriate funds from the closing of the private development agreement, and be it further

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

\* \* \*

Mr. Evans presented the next Agenda item, requesting authorization for the Corporation to amend the contract for legal services with Holland & Knight LLP (“H&K”). In his presentation, Mr. Evans mentioned among other things, that H&K is the legal counsel on the construction contract for Phase 1 of the Moynihan Project; and their contract needs to be amended to allow for their legal services to carry out the final year of their support on the Phase 1 Project which consist of closing contract close-out services as well as, the development of contract documents for the construction of Phase 2. Mr. Evans stated that H&K has performed exceedingly well on Phase 1 and their partner Rich Rhone is a fundamental part of the team and a critical advisor to the Project.

Following Mr. Evans’ presentation of the item, Director Mehul Patel asked if this amendment will cover Phase 2 or just carry H&K through the next year into the development of the construction contracts documents. Mr. Evans responded that the amendment will cover most of Phase 2.

There being no other questions or comments Chairman Mendez requested a motion for approval. Upon motion duly made and seconded, the following resolution was unanimously adopted:

229. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Contract with Holland & Knight LLP; Authorization to Take Related Actions

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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 to be responsible; and be it further

RESOLVED, that in accordance with the materials, the Corporation is hereby authorized to Amend Existing Contract for legal services with Holland & Knight LLP to increase the total contract amount to \$1,150,000, 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.

\* \* \*

Mr. Evans presented the next item, requesting authorization for the Corporation to amend the design services contract with Skidmore, Owings & Merrill (“SOM”). Mr. Evans explained that MSDC received a grant the previous year through the Federal Transportation Administration for a resiliency project for waterproofing, reconstruction and waterproofing of the moats around the Farley Building to prevent water penetration into the Penn Station train-shed. He continued, explaining that penetration into the train-shed is currently a serious problem, and the Corporation is requesting an amendment to SOM’s contract to include the design work for the resiliency project as part of SOM’s Phase 2 construction documentation. Mr. Evans further stated that since SOM developed the preliminary design for this resiliency project, it makes sense to move forward with SOM .

Following a full presentation of the item by Mr. Evans, Chairman Mendez requested a motion for approval. Upon motion duly made and seconded, the following resolution was unanimously adopted:

230. NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Contract with Skidmore, Owings & Merrill LLP for Architectural, Engineering, Design, Development, and Related Services; and Authorization to Take Related Actions
- 

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the corporation, the corporation hereby finds Skidmore Owings & Merrill LLP (“SOM”) to be responsible; and be it further

RESOLVED, that the Directors hereby authorize the amendment of the contract with SOM in the amount of \$477,861 plus a 10% contingency of \$47,786 for a total of \$525,647 for the purpose and services, and substantially on the terms and conditions, as set forth in the Materials, thereby increasing the aggregate limit of the contract to \$28,752,381; and be it further

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

\* \* \*

Next, Chairman Mendez asked Mr. Evans to present the last voting item on the Agenda, requesting authorization for the Corporation to amend the agreement with the Port Authority of New York & New Jersey (“PANY&NJ”). In his presentation, Mr. Evans discussed among other thing, the terms of the agreement under which PANY&NJ works in overseeing the day-to-day design and construction tasks and reporting to MSDC and the MSDC Directors. He stated that PANY&NJ has been a fantastic partner on the Phase 1 Project. Mr. Evans continued, stating

that he cannot imagine the success of this Project without Bruno Signorelli, Kelly Eustice, Jackie McCarthy and Andrew Lynn as well as Angel Martinez, who no longer works on the Project. He continued stating that ESD and USDOT determined that the PANY&NJ is essential in moving forward with the next Phase of the Project. Mr. Evans explained that this proposed amendment would amend PANY&NJ's consulting service agreement to include Phase 2 with the same terms and conditions as well as the same rates. Mr. Evans further explained that there would be an increase in staff as a result of the larger size of Phase 2 Project however, staffing would be encumbered under the same rate structure as under Phase 1.

Following a full presentation of the item by Mr. Evans, Director Patchett had some questions and concerns regarding the amendment structure of the Phase 2 costs. Director Patchett requested that the Directors approve monies for the previously approved Phase 1 work, as well as, the funds for the pre-construction services for Phase 2, and defer approval of the remaining funds until the work on Phase 2 has advanced further.

Alicia Reyes, designee for Director Sarah Feinberg, reminded the Directors that it would be helpful to understand when the board would need to approve the remaining monies. Mr. Evans responded it would need to happen no later than when the General Project Plan is executed or sometime in the Fall.

Director Patchett stated he wanted to have a better understanding of the structure before approving the full amount of the additional funds. Director Patchett made a motion to

approve funds to cover the previously approved Phase 1 as well as the funds for pre-construction services for Phase 2, deferring approval of the remaining funds until sometime in the Fall or not later than when the GPP is executed.

Following the discussion and comments by the Directors Chairman Mendez requested a motion for approval. Upon motion duly made and seconded, the following resolution was unanimously adopted:

231. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Agreement with the Port Authority of New York and New Jersey; and Authorization to Take Related Actions
- 

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

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the existing contract with the PANYNJ and increase the amount of such contract by \$1,500,000 (inclusive of a 10% contingency) to a new aggregate limit of \$6,000,000 for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

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

\* \* \*

Chairman Mendez then called for a motion to conduct an Executive Session, pursuant to paragraph (h) of the Subdivision 1 of Section 105 of the New York State Open Meetings Law, more specifically to discuss real estate negotiations issues related to the development of the James A. Farley Building. Upon motion duly made and seconded, the following resolution was



unanimously adopted:

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

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

The meeting was temporarily adjourned to conduct the Executive Session. All persons were requested to leave the room with the exception of the Directors, members of ESD's senior staff and other.

Once the meeting was back in Open Session, Chairman Mendez noted for the record that no votes had been taken during Executive Session.

There being no additional business, the meeting was adjourned at approximately 3:26 p.m.

Respectfully submitted,

Regina Stephens  
Acting Corporate Secretary

# **ITEM 2**



FOR CONSIDERATION

November 18, 2015

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization to Increase the FY2015-16 Operating Budget for the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) to Cover Additional Staffing

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Background

New York State Finance Law requires Directors of the Corporation to approve annual budgets prior to the end of the preceding fiscal year. In order to comply with this Law, the MSDC Directors approved the FY 2015-16 MSDC Operating Budget on March 30, 2015. The approved FY2015-16 Operating Budget was **\$495,827**, representing an approximately 1% increase over the \$493,843 in planned spending for FY2014-15. The Operating Budget was based upon three-and-a-half Full Time Employees (“FTEs”).

In order to prepare for the next phase of the Moynihan Station Project (the “Project”), the MSDC President has consulted with the Directors about the need for additional staffing. It has been noted in prior meetings that three previously budgeted positions at the Corporation remain unfilled. At this time, the MSDC President recommends the addition of a Senior Project Manager to assist in the planning and development aspects of Phase 2 of the Project. Tasks for the additional staff member would include representing the Corporation as necessary at interagency meetings; managing the federal and state required reporting functions; supporting the President in management of project planning, design and construction; and assisting in the negotiation and finalization of stakeholder agreements necessary for the next phase of the Project.

Authorization is sought to add one additional FTE to the staffing plan and to authorize and increase the FY2015-16 Operating Budget to accommodate the additional salary and associated fringe benefits for the remainder of the current fiscal year for an expected salary range of \$70,000 – \$90,000. Based on the timing of posting for a position and conducting interviews, the request will cover the final four months of the fiscal year.

The FY2015-16 MSDC Operating Budget would be adjusted as follows:

- Increase of 1 FTE to a total of 4.5 FTEs
- Increase of \$30,000 in budgeted salaries from \$295,110 to \$325,110
- Increase of \$11,400 in budgeted fringe benefits from \$11,142 to \$123,542
- Total Increase of \$41,400 in budgeted Personal Services from \$407,252 to \$448,652
- Total Increase of \$41,400 in the FY2015-16 Operating Budget from \$495,827 to \$537,227

The revised FY2015-16 MSDC Operating Budget is attached as **Attachment A**.

Despite this authorization, the MSDC President will endeavor to keep the additional salary within the previously authorized Operating Budget to the greatest extent possible by managing other budget lines.

### **Source of Funds**

Funding for this additional position will come from federal grants authorized for the next phase of the project and for the resiliency sub-project.

### **Environmental Review**

New York State Urban Development Corporation d/b/a Empire State Development 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 Action**

The Directors are requested to authorize one additional FTE for the MSDC staffing plan and to authorize an increase in the FY2015-16 MSDC Operating Budget to account for this position.

### **Recommendation**

Based on the foregoing, the MSDC President recommends approval of the requested action.

### **Attachments**

Resolutions

Attachment A – FY2015-16 MSDC Operating Budget - REVISED

November 18, 2015

NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project  
– Authorization to Increase the FY2015-16 Operating Budget for Moynihan Station  
Development Corporation (“MSDC” or the Corporation) to Cover Additional Staffing

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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 Revised Moynihan Station Development Corporation – FY2015-16 Operating 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.

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**Empire State Development  
Moynihan Station Redev Corp  
Operating Spending Plan FYE 2016**

	Actual Expense FYE 2014	Spending Plan FYE 2015	Projected Expense FYE 2015	REVISED Spending Plan FYE 2016
<b><u>PERSONAL SERVICES</u></b>				
Salaries	257,164	278,271	295,110	325,110
Fringe Benefits	90,191	105,743	113,477	123,542
<b>TOTAL PERSONAL SERVICES</b>	<b>347,355</b>	<b>384,014</b>	<b>408,587</b>	<b>448,652</b>
<b>HEADCOUNT</b>	<b>3</b>	<b>3.5</b>	<b>3.5</b>	<b>4.5</b>
<b><u>NON-PERSONAL SERVICES</u></b>				
<b>Professional Fees</b>				
Legal / Accounting Fees	0	0	0	0
Consultant Fees	0	0	4,933	10,000
<b>Total Professional Fees</b>	<b>0</b>	<b>0</b>	<b>4,933</b>	<b>10,000</b>
<b>Other Non-Personal Services</b>				
Employee Travel & Meals	0	1,000	1,774	1,000
On-line Services/ Due & Subscriptions	225	750	0	0
Office Occupancy Expenses	0	0	0	0
Insurance	22,810	26,329	8,840	18,825
Repairs/ Maint /Prop Mgmt/ Outside Serv.	4,176	6,250	2,709	3,250
Telephone/Fax/Internet	36,617	35,500	27,833	30,000
Office Supplies / Printing / Advertising	0	36,500	0	22,500
Computers/Software/Equipment	3,787	3,500	2,990	3,000
<b>Total Other Non Personal Services</b>	<b>67,615</b>	<b>109,829</b>	<b>44,146</b>	<b>78,575</b>
<b>TOTAL NON-PERSONAL SERVICES</b>	<b>67,615</b>	<b>109,829</b>	<b>49,079</b>	<b>88,575</b>
<b>TOTAL OPERATING BUDGET</b>	<b>414,970</b>	<b>493,843</b>	<b>457,665</b>	<b>537,227</b>

# ITEM 4



FOR CONSIDERATION

November 18, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization for Moynihan Station Development Corporation (“MSDC” or the “Corporation”) to Amend the Letter Agreement with Consolidated Edison Company of New York, Inc. (“Con Edison”) with Regard to Work That Must be Performed on Con Edison Facilities as Part of the Project

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Background

Con Edison is performing certain required electric, gas, and steam work as part of the West End Concourse Expansion, Connecting Corridor Sub-project and the Early Action Train Hall Work.

In March 2013, MSDC Directors authorized a Letter Agreement (the “Letter Agreement”) between Con Edison and MSDC to address this work. The Letter Agreement provides for Con Edison to carry out certain Project related work as agreed to between MSDC and Con Edison. The Letter Agreement provides for direct reimbursement to Con Edison by MSDC for the costs of such work performed by Con Edison or its contractors.

The key terms of the Letter Agreement are as follows:

- MSDC conducts its Project work that impacts Con Edison facilities pursuant to the permit granted by Con Edison;
- 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;
- Any changes to the relocation of Con Edison facilities that deviate from the proposed construction drawings require the approval of Con Edison;
- Any remediation of environmental issues that affect Con Edison facilities will be coordinated between MSDC and Con Edison;



- All electric, gas and steam work required to be performed in furtherance of the Project 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 MSDC.

The original estimate for these services, provided by Con Edison was \$368,549 (\$335,044 plus a 10% contingency of \$33,505) and specifically focused on anticipated utility relocations underneath 33<sup>rd</sup> Street.

Subsequent to the signing of the Letter Agreement, conditions discovered beneath 33<sup>rd</sup> Street during the excavation phase necessitated significant additional Con Edison performed work in order to address issues with a conflicting gas main (cost: \$175,000).

Early Action Work in the James A. Farley Post Office Building (the "Farley Building"), which was approved by the MSDC Directors in May 2015, included utility work in and around the Farley Building. This new Early Action Work was not part of the work covered by the Letter Agreement. This new Early Action Work required additional Con Edison performed work with respect to transformer vaults within and proximate to the building and the switchover of certain electrical services fed through the basement (cost: \$275,000).

### **Proposed Amendment**

At this time, MSDC and the Port Authority of New York and New Jersey ("Port Authority") estimate that Con Edison will undertake an approximate aggregate of \$880,000 worth of work related to the Project (which includes a 10% contingency). As set out above in these materials, the difference between the original estimate and the current forecast is due to the Con Edison performed work for (1) unforeseen conditions beneath 33<sup>rd</sup> Street, and (2) additional work necessitated by the Early Action Train Hall Work.

As this work must be performed expeditiously in order to complete the West End Concourse Expansion, the Connecting Corridor Sub-project and the Early Action Train Hall Work on schedule, it is recommended that the letter agreement be amended to increase the authorized amount of Con Edison work by \$511,451 (\$464,956 plus a 10% contingency of \$46,495). With this increase, the aggregate limit of the Letter Agreement authorization would be \$880,000 (including a 10% contingency).

### **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, Port Authority funding for Phase 1, and mortgage loan proceeds currently held in a dedicated account by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") for Early Action Train Hall Work. As Phase 1 enters the final year of construction, reductions in other budget lines for the overall project will allow the overall project budget to remain unchanged despite this amendment.

### **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.

### **Non-Discrimination and Contractor & Supplier Diversity**

For work to be funded by this amendment that will be 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 amend the Letter Agreement with Con Edison in order to increase the authorized amount of work to be performed by Con Edison by \$511,451 (\$464,956 plus a 10% contingency of \$46,495), bringing the aggregate limit of the Letter Agreement to \$880,000.

### **Recommendations**

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

### **Attachments**

Resolutions

November 18, 2013

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

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

RESOLVED, that the Directors hereby authorize the amendment of the Letter Agreement with Con Edison for work performed by Con Edison and its own contractors, in the amount of \$511,451 (\$464,956 plus a 10% contingency of \$46,495) for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials, thereby increasing the aggregate limit of the Letter Agreement to \$880,000; 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 5



FOR CONSIDERATION

November 18, 2015

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization to Amend the Construction Contract with Skanska USA Civil Northeast Inc. (“Skanska”) for the Connecting Corridor Sub-project to Increase the Authorized Contingency

**CONTRACT NEEDS AND JUSTIFICATION**

**I. Contract Summary**

Contractor:	Skanska USA Civil Northeast Inc.
Scope of Services:	Construction Phase 1 Moynihan Station—Connecting Corridor sub-project
Contract Term:	June 21, 2013 to July 31, 2016
Contract Amount:	Not to exceed \$15,915,000 + \$1,591,000 contingency
Proposed Amendment:	Not to exceed \$795,500
New Proposed Total Contact Amount:	\$18,301,500

**II. Funding Source(s)**

Original contract funded by a combination of Federal Railroad Administration (“FRA”) and Metropolitan Transportation Authority (“MTA”) funds.

Contract amendment will be funded by FRA and MTA grant funds budgeted for additional overall project contingency and Management Reserve.

### **III. Background**

The Moynihan Station Project will build a new intercity train hall for Amtrak within the James A. Farley Post Office Building (the "Farley Building").

Phase 1 consists of three sub-projects:

- West End Concourse Expansion
- Platform Emergency Ventilation Fan Rooms in C-Yard;
- Connecting Corridor and related Subway work.

Phase 1 is a pre-requisite to Phase 2, which is the construction of a new Amtrak train hall within the Farley Building.

The contract for the Connecting Corridor sub-project was approved by the Moynihan Station Development Corporation ("MSDC" or the "Corporation") Board on March 27, 2013.

### **IV. Description of Proposed Amendment**

Authorization is now sought to amend the contract with Skanska for the construction of the Connecting Corridor in order to increase the overall authorized construction contingency by \$795,500 to cover costs incurred as a result of Unforeseen Conditions.

Skanska is approaching the limit of the overall originally authorized 10% contract contingency of \$1,591,000.

The Connecting Corridor sub-project has dealt with significant challenges with rock excavation underneath 33<sup>rd</sup> Street and recovery from delays resulting from required Con Edison utility work that had to be repeatedly postponed due to the unusually difficult winter weather in 2015.

Therefore, authorization is sought to amend the Skanska contract to increase the overall contingency by \$795,500. Funds for this additional contingency will be drawn from the budgeted Management Reserve allocation in the FRA 'Appropriations' grant and MTA funding agreement and will not impact the overall project cost. This would represent an increase in the authorized contingency for this contract to 15% as compared to the original Port Authority of New York and New Jersey ("PANYNJ" or "Port Authority") risk analysis recommendation of 20%.

All Change Orders that would necessitate the use of these additional contingency funds are reviewed first by an independent estimator and then by the Port Authority Engineering Department, as specified in the MSDC-PANYNJ Consulting Services

Agreement. Any Change Order in excess of \$250,000 must be personally authorized by the MSDC President.

A Contract Reporter Exemption has been submitted for this contract amendment.

**V. Scope of Work**

The amendment will increase the overall authorized contract contingency by \$795,500 to allow for Change Orders to the Connecting Corridor Sub-project encountered as a result of Unforeseen Conditions, design changes and changes in the field. All Change Order must be reviewed and authorized by PANYNJ Engineering as stipulated by the MSDC-PANYNJ Consulting Services Agreement, and all Change Orders in excess of \$250,000 must be personally authorized by the MSDC President.

**VI. Contract Term, Price and Funding**

This amendment will not impact the original contract schedule or the overall Project budget. Additional contingency funds will only be paid upon the approval of a change order and upon the completion of all corresponding work.

Funding for the additional contingency will be provided through the FRA "Appropriations" grant and MTA funding agreement.

**VII. Non-Discrimination and Contractor & Supplier Diversity**

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

**VIII. Environmental Review**

New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), as lead agency on behalf of MSDC, conducted an environmental review of the

Moynihan Station 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 the requested authorization to amend the construction contract with Skanska.

**IX. Requested Actions**

The Directors are requested to authorize the Corporation to amend the construction contract with Skanska USA Civil Northeast, Inc. to increase the authorized contingency by \$795,500, for a total contract amount of \$18,301,500, as set forth in these materials.

**X. Recommendation**

Based on the foregoing, MSDC staff recommends approval of the requested actions. Pursuant to the Board-approved consulting services agreement between MSDC and PANYNJ and the grant conditions set forth by United States Department of Transportation/FRA. The Port Authority has reviewed and affirmed this request.

**XI. Attachments**

Resolution



November 18, 2015

NEW YORK CITY (New York COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Construction Contract with Skanska USA Civil Northeast to Increase the Authorized Contingency and Authorization to Take Related Actions

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

RESOLVED, that in accordance with the Materials, the construction contract for the Connecting Corridor sub-project with Skanska USA Civil Northeast Inc. is amended to increase the authorized contingency by an additional amount not to exceed \$795,500, resulting in a new contract amount for a total not to exceed eighteen million three hundred one thousand five hundred dollars (\$18,301,500) for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

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

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# ITEM 6



FOR CONSIDERATION

November 18, 2015

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization to Amend the Contract with Skidmore, Owings & Merrill LLP for Architectural, Engineering, Design, Development, and Related Services; and Authorization to Take Related Actions

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**I. Background**

The Moynihan Station Civic and Land Use Improvement Project (“the Project”) will build a new intercity train hall for Amtrak within the Farley Post Office Building. The Project will be accomplished in distinct phases.

Phase 1 is currently under construction and consists of three sub-projects, (1) the West End Concourse Expansion and related Railroad work, (2) the Emergency Platform Ventilation Fan Rooms in C-Yard, and (3) the Connecting Corridor Sub-project and related Subway work.

Design of the West End Concourse Expansion was executed by Skidmore, Owings & Merrill (“SOM”) under a contract authorized by the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) Directors. Design for the West End Concourse Expansion was completed at the end of 2011, and a construction contract was competitively bid and awarded to Skanska USA Civil Northeast, Inc. (“Skanska”) on May 9, 2012. Construction is scheduled for completion in August 2016.

The final award of the construction contract for the West End Concourse Expansion was initially delayed due to a request for rebids by the pre-qualified contractors. As a result, there was a six month delay in commencing Phase 1 construction. During this delay, SOM continued to perform design services to support the re-scoping effort and re-packaging of construction documents. SOM’s original proposal for construction phase services anticipated a 45 month construction phase duration. With the re-bid, authorization for an additional six months of construction phase support needs to be added to the SOM contract. The proposed amendment will extend SOM’s construction phase support until September 2016.

## **II. Scope of Work**

Authorization is now sought for an amendment to the SOM contract that provides for: (A) an extension of the contract term through September 30, 2016; and (B) an increase in the overall dollar amount of the contract to support the said additional six months of services. The total amount requested for these services is \$738,100 (\$671,000 plus a 10% contingency of \$67,100). This cost proposal was compared to the SOM burn rate for construction phase services during the construction period thus far and is consistent with both previous monthly spending and updated projections regarding the amount of additional support necessary to complete the Project as planned. The Port Authority of New York and New Jersey (“PANYNJ” or the “Port Authority”) has reviewed and affirmed that this request is fair and reasonable.

## **III. Contract History**

In 1998, after a competitive bidding process and pursuant to Director authorization, MSDC (then Pennsylvania Station Redevelopment Corporation) entered into the Contract pursuant to which SOM would “provide all architectural, structural, mechanical and electrical engineering services necessary for the programming, design, contract documentation and construction administration of the restoration and redevelopment of a portion of the historic James A. Farley Post Office Building in New York City into an intermodal transportation facility” for an amount not to exceed \$23,000,000. In 1999, the Directors authorized an increase in the total contract amount to \$44,700,000. By 2003, approximately \$34,500,000 had been expended against the Contract, and SOM had performed ably in all aspects of its original scope, including completion of construction documents at the 80% level for the Project iteration current at that time.

With the decision in 2010 to advance the Moynihan Station Project in two distinct phases—Phase 1, which is the below-grade critical infrastructure work now under construction, and Phase 2, which is the completion of the train hall—and with all previously performed Contract work having been performed, accepted, and paid for in full, the Directors authorized the amendment and restatement of the Contract. The amended and restated Contract terms superseded the previous terms, provided for SOM to repackage drawings for the advancement of Phase 1, and established a new maximum Contract amount of \$5,775,928. This amount was within the previously authorized but unspent amount for the Contract.

Since 2010, the Contract has been amended eight times in order to provide for: new insurance requirements for Phase 1, for pedestrian flow modeling work, construction-phase advisory services for Phase 1, the re-bid repackaging of designs for the 33rd Street Connector, test-fits for the purposes of updating the feasibility study for potential commercial development surrounding the train hall, the repackaging of the 2006 train hall designs for Phase 2 of the project, construction-phase advisory services to support the execution of

Early Action Work, and resiliency moat improvements. These amendments plus change orders within the authorized contingency amounts have increased the Contract's current maximum value to \$28,752,381.

The requested additional Phase 1 architectural services are estimated to cost \$738,100 (\$671,000 plus a 10% contingency of \$67,100), resulting in the SOM contract being increased to a maximum value of \$29,490,481. The applicable design costs will be funded by Federal Railroad Administration and Port Authority grant proceeds.

**IV. Responsible Parties**

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

**V. Funding**

Funding for Phase 1 work will come from the Federal Railroad Administration and Port Authority grant proceeds. Reductions in other budget lines for the overall Project as Phase 1 enters the final year of construction will allow the overall Project budget to remain unchanged despite this amendment.

**VI. Non-Discrimination and Contractor & Supplier Diversity**

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

**VII. Environmental Review**

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

**VIII. Requested Actions**

Staff requests that the Contract be amended in conformance with the terms and conditions set forth in these materials, inclusive of sub-consultant work as described above, specifically to provide for the continuation of construction phase architectural services throughout the duration of the Phase 1 construction project.

**IX. Recommendation**

Based on the foregoing, MSDC staff recommends approval of the requested actions. Pursuant to the Board-approved consulting services agreement between MSDC and PANYNJ and the grant conditions set forth by United States Department of Transportation/FRA. The Port Authority has reviewed and affirmed this request is fair and reasonable.

**X. Attachments**

Resolution

November 18, 2015

NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Contract with Skidmore, Owings & Merrill LLP for Architectural, Engineering, Design, Development, and Related Services; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Skidmore Owings & Merrill LLP (“SOM”) to be responsible; and be it further

RESOLVED, that the Directors hereby authorize the amendment of the contract with SOM in the amount of \$738,100 (\$671,000 plus a 10% contingency of \$67,100) for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials, thereby increasing aggregate limit of the contract \$29,490,481; and be it further

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

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