



LOWER MANHATTAN DEVELOPMENT CORPORATION

in partnership with

EMPIRE STATE DEVELOPMENT

and

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Partial Action Plan S-2

for

**Utility Restoration and Infrastructure Rebuilding, 130 Liberty Street, and
Other World Trade Center Area Improvements Program**

Overview

Lower Manhattan Development Corporation (LMDC) has prepared the following amended Partial Action Plan with regard to the \$783 million federal appropriation administered by the United States Department of Housing and Urban Development (HUD) for damaged properties and businesses (including the restoration of utility infrastructure) as well as for economic revitalization related to the terrorist attacks at the World Trade Center on September 11, 2001. This amended plan details the proposed expenditure of \$750 million of the \$783 million appropriation. The other \$33 million is addressed in a separate Partial Action Plan that was approved by HUD on September 15, 2003. LMDC is also the recipient of another \$2 billion federal grant from HUD for World Trade Center disaster recovery and rebuilding efforts in the aftermath of the terrorist attacks.

This Plan details programs to restore, rebuild, and revitalize utility infrastructure in Lower Manhattan (Utility Restoration and Infrastructure Rebuilding Program or URIR Program), to fund other improvements in and around the World Trade Center (Other World Trade Center Area Improvements or OWTCA Improvements), and to complete the abatement and deconstruction of a building at 130 Liberty Street (130 Liberty Street Deconstruction Program or 130 Liberty Program). The programs are administered by LMDC and in the case of the URIR Program by the New York State Urban Development Corporation d/b/a Empire State Development (ESD), New York State's economic development agency, in cooperation with the Economic Development Corporation (EDC), The City of New York's development agency.

Partial Action Plan Activities		Allocation as Amended 02/2011	Allocation as Approved by HUD 10/27/2011	Allocation as Amended 02/2012
I. Utility Restoration, Infrastructure Rebuilding, and Other World Trade Center Area Improvements (URIR/OWTC)				
	1. Emergency and Temporary Service Response	\$159,830,994	\$159,830,994	\$159,830,994
	2. Permanent Restoration and Infrastructure Improvements	\$207,033,415	\$207,033,415	\$207,033,415
	3. Service Interference	\$116,517,678	\$116,517,678	\$116,517,678
	S. Other World Trade Center Area Improvements			
	A. World Trade Center Memorial/Museum	\$35,000,000	\$35,000,000	\$37,500,000
	B. World Trade Center Performing Arts Center	\$0	\$100,000,000	\$100,000,000
	C. West Street Pedestrian Bridge at West Thames Street	\$0	\$20,000,000	\$20,000,000
	D. East River Waterfront Esplanade and Piers	\$0	\$17,000,000	\$17,000,000
	E. Other World Trade Center Area Improvements (TBD)	\$161,617,913	\$24,617,913	\$22,117,913
	<i>Subtotal OWTC Area Improvements</i>	\$196,617,913	\$196,617,913	\$196,617,913
	Subtotal URIR/OWTC	\$680,000,000	\$680,000,000	\$680,000,000
II. Program Administration				
	A. ESD Program Management	\$10,000,000	\$10,000,000	\$10,000,000
	B. LMDC Program Monitoring	\$3,500,000	\$3,500,000	\$3,500,000
	C. NYC MOSAICS Permint Management System	\$4,000,000	\$4,000,000	\$4,000,000
	Subtotal Program Administration	\$17,500,000	\$17,500,000	\$17,500,000
	III. 130 Liberty Deconstruction	\$52,500,000	\$52,500,000	\$52,500,000
	PARTIAL ACTION PLAN TOTAL	\$750,000,000	\$750,000,000	\$750,000,000

The first amendment to this Partial Action Plan, as approved by HUD on September 3, 2008, added the 130 Liberty Street Deconstruction Program, and allocated \$37.5 million to the additional activity by reallocating \$25 million from URIR Program Category 5 and \$12.5 million from URIR Program Category 6.

A second Partial Action Plan amendment was published on October 1, 2009, reallocating \$2.5 million from URIR Program Category 5 to ESD Program Management. This second amendment reduced the Category 5 allocation from \$7.5 million to \$5 million and increased ESD Program Management from \$7.5 million to \$10 million.

A third Partial Action Plan amendment was published on January 10, 2010, reallocating \$15 million from URIR Program Category 4 to the 130 Liberty Program. This third amendment reduced Category 4 from \$50 million to \$35 million and increased the 130 Liberty Program from \$37.5 million to \$52.5 million.

A fourth Partial Action Plan amendment was published on October 8, 2010, reallocating the remaining funds in URIR Program Categories 4 and 5, \$35 million and \$5 million respectively, to URIR Program Category 3, raising the Category 3 allocation to \$100 million. This

amendment was made in accordance with priorities and process established in the **Allocation of Program Funds** section of this Partial Action Plan because the total amount of Category 3 claims submitted and verified was much more than \$100 million.

A fifth Partial Action Plan amendment was published on February 11, 2011, expanding the URIR Program to add the activity category of Other World Trade Center Area Improvements to the URIR Program, renaming the program to include the new category “Utility Restoration, Infrastructure Rebuilding and Other World Trade Center Area Improvements Program” (URIR/OWTC Program), and reallocating funds from Category 2 to Category 3 of the URIR Program to allow a greater portion of eligible Category 3 claims to be paid. This amendment identified the World Trade Center Memorial and Museum (WTC Memorial/Museum) as a project to be funded as part of the OWTCA Improvements category and established that specific funding allocations for additional projects in that category would be identified in future amendments and would be made available for public comment.

A sixth Partial Action Plan amendment published on February 8, 2012, added three additional activities to the one activity (World Trade Center Memorial/Museum) already specified as part of the Utility Restoration, Infrastructure Rebuilding and Other World Trade Center Area Improvements (URIR/OWTC) Program. The three new activities were: World Trade Center Performing Arts Center (\$100 million), Pedestrian Bridge over West Street at West Thames Street (\$20 million), and East River Waterfront Esplanade and Piers (\$17 million).

A seventh Partial Action Plan amendment also published on February 8, 2012, increased the allocation for the World Trade Center Memorial/Museum from \$35 million to \$37.5 million and reduced the Other World Trade Center Area Improvements (TBD) allocation by \$2.5 million. The amendment also revised the purpose and description of MOSAICS.

Any of the following constitutes a substantial amendment of this plan and such amendment will be available for public review and subsequent approval by HUD:

- The elimination of any of the activities identified by this Partial Action Plan;
- Any fundamental change in the eligibility criteria for funding under this Partial Action Plan;
- or
- The addition of any activities not defined by this Partial Action Plan.

National Objective

LMDC is a subsidiary of the ESD created in December 2001 to oversee the rebuilding and revitalization of Lower Manhattan. The activities contained in this Partial Action Plan have been designed to meet community and development needs resulting from the September 11th attacks at the World Trade Center (WTC Site). These activities have particular urgency because LMDC has determined that existing conditions pose a serious and immediate threat to the health or welfare of the City and its residents and other financial resources are not available to meet such needs.

Public Comment to the Partial Action Plan

Initial Partial Action Plan

This Partial Action Plan was made available for public comment from May 28, 2003 to June 12, 2003. LMDC received 14 public comments relating to the initial Partial Action Plan S-2. The responses to comments received during the comment period have been incorporated into this Partial Action Plan as Submitted to HUD and are reviewed in section IV below.

First Partial Action Plan Amendment

This amendment was open to public comment from June 27, 2008 through July 30 2008. LMDC did not receive any relevant comments on these proposed amendments.

Second, Third and Fourth Partial Action Plan Amendments

These amendments were not substantial amendments and were not made available for public comment.

Fifth Partial Action Plan Amendment

Components of this amendment were open to public comment from August 3, 2010 through September 2, 2010 and from October 13, 2010 through November 12, 2010. LMDC received 29 public comment submissions relating to this amendment. The responses to comments received during the comment period are addressed in section IV below.

Sixth Partial Action Plan Amendments

This amendment was open to public comments from March 30, 2011 through April 30, 2011. LMDC received one public comment related to the proposed amendment as noted in section IV below.

Seventh Partial Action Plan Amendments

The seventh amendment was not a substantial amendment and was not made available for public comment.

Public comments were accepted by posted and electronic mail. LMDC placed Invitations to Public Comment for Partial Action Plan in English, Spanish and Chinese daily newspapers and in weekly community newspapers serving Lower Manhattan. In addition, the text of the draft plans were made available on LMDC's website (www.renewnyc.com).

LMDC delivered and mailed copies of the initial Partial Action Plan and the first, fifth and sixth amendments in English, Spanish, and Chinese to more than 90 community, residential, civic and cultural organizations throughout Lower Manhattan, including Community Board 1, 2 and 3, several tenants' associations and public libraries. In addition, LMDC sent electronic notices of the initial and amended Partial Action Plans in three languages to elected officials, LMDC's Advisory Council members, and over 140 Lower Manhattan civic, community and cultural organizations.

***I. Utility Restoration, Infrastructure Rebuilding, and Other
World Trade Center Area Improvements***

A. Program Objectives

On September 11, 2001, terrorist attacks killed 2,749 people and destroyed every structure on the WTC Site, including all five office towers, commercial and governmental low-rise buildings, the hotel, the central outdoor plaza, the underground concourse, PATH terminal and subway stations. Immediately south of the WTC Site, the Deutsche Bank office tower at 130 Liberty Street was severely damaged and St. Nicholas Church at 155 Cedar Street was destroyed. Together, these devastated sites totaled over 20 acres. The significant loss of life, jobs, and commercial and open space affected the vitality of Lower Manhattan and continues to pose a threat to the financial, emotional, and cultural vitality of the area. As outlined in Partial Action Plans 1 through 12 as well as the Final Action Plan, LMDC has undertaken numerous efforts to support the recovery of Lower Manhattan, including the redevelopment of the WTC Site and the restoration and revitalization of the surrounding financial district and residential neighborhoods.

The World Trade Center attacks inflicted widespread destruction upon the energy (electric, gas, and steam) and telecommunications utility infrastructure, resulting in extensive disruptions in service to the business and residential communities of Lower Manhattan. The energy and telecommunications firms responded rapidly in the aftermath of the disaster to provide emergency and temporary services and they worked for some time to restore permanent service to all customers located within Lower Manhattan. The costs to deliver emergency and temporary services and to rebuild damaged infrastructure for permanent service delivery were considerable and have been borne by the affected utility service providers to the extent not covered by their insurance providers or funds from other sources such as lawsuits.

Congress appropriated \$750 million to assist with the revitalization of Lower Manhattan for the restoration of utility service, the rebuilding of utility infrastructure, and to help damaged properties and businesses.¹ The objectives of the Utility Restoration, Infrastructure Rebuilding and Other World Trade Center Area Improvements Program (URIR/OWTC Program) are (1) to protect business and residential customers from bearing the cost of the infrastructure rebuilding; (2) to enhance the revitalization and redevelopment of Lower Manhattan as a world-class commercial and residential community by encouraging investment in energy and telecommunications infrastructure; and (3) to assist properties and businesses damaged by, and economic revitalization directly related to the September 11 terrorist attacks on New York City. Funds allocated through this program will accordingly seek to:

- Offset uncompensated emergency response, restoration, and rebuilding costs borne by the utility service providers that might otherwise be passed through to customers. Uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses.

¹ An Act Relative to Making Supplemental Appropriations, Pub.L.No. 107-206, 116 Stat. 889 (2002).

- Maintain Lower Manhattan as a competitive and attractive location for business, cultural, and residential development by assisting in the redevelopment of cost-competitive and quality-competitive energy and telecommunications services.
- Provide funding for World Trade Center Memorial and cultural facilities, and affordable housing, education, infrastructure, open space, quality of life, transportation, and economic development projects benefiting the area.

The URIR Program categories have provided financial assistance directly to energy and telecommunications service companies for reimbursement of qualified emergency and temporary restoration costs and will provided monies for permanent restoration. To remain consistent with Congressional intent for the appropriation, this program has been structured to allocate funds that give greatest priority to the restoration of destroyed utility infrastructure, and the consequent protection that affords to impacted business and residential customers.

Funds not required for the highest priority URIR Program categories have been allocated to lower priority categories and the newest category of Other World Trade Center Area Improvements which was established to fund improvements and initiatives in and around the WTC Site, which is located in the Financial District a few blocks northwest of Wall Street and just east of the World Financial Center in Battery Park City.

B. Program Eligibility

Eligible applicants for the utilities-related grant categories of this program are limited to investor-owned utility service providers under the jurisdiction of the New York State Public Service Commission (NYSPSC), the Federal Energy Regulatory Commission (FERC), or the Federal Communications Commission (FCC), with service territory in the affected area in Lower Manhattan, that incurred unreimbursed expenditures resulting from impact damage related to the attacks on September 11, 2001. The background and guidelines for the URIR Program grants were set forth in the Initial Partial Action Plan and modified in subsequent amendments, including the elimination of three grant categories.

For the purposes of this program, Lower Manhattan is the area on and south of Canal Street, from the East River to the Hudson River. Publication of the Partial Action Plan serves as the solicitation for eligible submissions for damage reimbursement from utility service providers.

For the category OWTCA Improvements, LMDC is considering projects involving physical improvements in and around the WTC Site, including those in areas of the Financial District to the east and in the area of the World Financial Center and Battery Park City to the west, along with affordable housing, education, infrastructure, open space, quality of life, transportation, and economic development projects benefiting the area.

C. Categories of Eligible Costs and Activities

This section contains an outline of the categories of eligible costs and activities, including the history of the original and final allocation of funds to each category.

Allocation of Program Funds

The majority of eligible, audited, and verified expenses incurred in Category 1 were reimbursed up to 100%. Expenses incurred in Categories 2 and 3 were reimbursed at a partial level to ensure that available funds are apportioned among all affected firms, except if the work is coordinated with the City as provided under Program Administration, in which case the reimbursement could have been up to 100%.

As a condition for receiving reimbursement for eligible costs, utility service providers were required to certify that expenditures for which they have received compensation, either through insurance, jurisdictional cost allocations, tax credits or deductions, gross revenue exclusions, other revenue recovery methods, and/or from this federal appropriations program, will not be assessed against customers. Moreover, utility service provider recipients of funds will be under a continuing obligation to inform ESD/EDC of monies received from any outside source that compensate the recipient for any costs for which the recipient has been reimbursed pursuant to this plan. Service providers receiving funds are required to be in compliance with all applicable local, state, and federal regulatory requirements.

Category 1 was considered the highest priority for reimbursement of incurred and confirmed costs. Upon fulfillment of Category 1 requests, Category 2 became the highest priority, with funds moving upward from the lowest available category to address requests in excess of the initial allocation, and so forth, for Categories 3 and beyond, as funds remained available.

The Fourth Amendment to this Partial Action Plan, published on October 8, 2010, implemented the **Allocation of Program Funds** provision with respect to the reallocation of funds to Category 3 from lower priority categories. The \$60 million originally allocated to Category 3 was much less than the total amount of verified claims submitted by utility service providers of more than \$180 million. All funds remaining in lower priority Categories 4 and 5 (\$35 million and \$5 million, respectively) were reallocated to address eligible expenses in Category 3, raising the allocation in Category 3 to \$100 million.

The Fifth Amendment to this Partial Action Plan, published on February 11, 2011 made a further reallocation from Category 2 to Category 3. This reallocation was made because verified submissions by utility service providers for Category 1 and Category 2 proved to be less than the initial allocation and a settlement of all outstanding claims by utility service provider for Categories 1, 2, and 3 required that an additional \$16,517,678 be made available in Category 3. The remainder of the funds initially allocated to Category 1 and Category 2 were reallocated to fund Category S for Other World Trade Center Area Improvements.

Environmental Regulations Compliance

Any application from a utility service provider for funds under this Partial Action Plan as approved will be considered, by HUD as a federal action. On the application date, unless the project has already been determined to be an *exempt activity* as defined by federal regulations, all physical development activities for the project site or activity proposed for receiving HUD

financial assistance must halt pending environmental clearance of the project site or activity. A violation of these regulations by the state, its corporations, applicants, or the applicants' partners or contractors may result in disqualification of the use of HUD financial assistance for projects and activities found in violation under this program.

Generally, neither HUD funds nor non-HUD funds are to be committed or expended for a project receiving HUD assistance until there is compliance with National Environmental Policy Act (NEPA) and related federal laws and authorities and HUD has approved the environmental certification and a request for release of funds.

Category 1 (highest priority) - Emergency and Temporary Service Response - \$159,830,994

Eligible costs under this category were incurred to stabilize service delivery to Lower Manhattan, preserve public safety and public health, prevent additional destruction, provide rescue assistance, and construct the infrastructure necessary for temporary restoration of critical energy and communications services. Temporary restoration of service enabled the resumption of commerce and the start of recovery and rebuilding and assisted in preparation for the restoration of permanent service. Eligible costs will be reimbursed up to 100% of actual, incurred, uncompensated, and documented costs. Uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses. Awards will be based on the following criteria, although not necessarily of equal weight:

- (1) The degree to which a direct and dollar for dollar beneficial effect of funding on rates to consumers of the relevant public service is proven and assured;
- (2) The extent to which the amount requested is for reimbursement of equipment and installation costs for repair or replacement of damaged infrastructure facilities and equipment that provide direct service to the public (as opposed to ancillary facilities serving the applicant that only indirectly service the public); and
- (3) The extent to which the applicant has diligently and aggressively pursued its claims with its insurance companies within the terms and conditions of the applicable insurance policies covering their losses.

The deadline for application and submittal for reimbursement of documented, incurred Emergency and Temporary Service Restoration costs not otherwise covered by settled or pending insurance claims is September 30, 2003. The deadline for submittal for reimbursement of incurred costs that may or may not be partially covered by pending/settled insurance claims was March 31, 2004. A final settlement of all claims by utility service providers under Categories 1, 2, and 3 was reached in December 2010. This settlement established the total funding for Category 1 to be \$159,830,994.

Category 2 - Permanent Restoration and Infrastructure Improvements - \$207,033,415

Eligible costs under this category are those incurred to permanently replace, restore, and enhance the equipment and infrastructure to deliver energy and telecommunications utility services. Where appropriate and cost effective, infrastructure restoration using current technology will likely exceed the service quality and/or capacity of the pre-September 11, 2001 systems being restored. Technology advances over the past two decades have brought significant improvements in utility infrastructure capacity and capabilities, particularly in telecommunications. In certain cases, restoration of permanent service in Lower Manhattan will reasonably entail the replacement of some infrastructure with more modern or resilient technology options. These options may improve the system by increasing capacity, service quality and/or public safety as compared to September 10, 2001 levels, at a marginally higher cost than that of prior generations of equipment or other options. Alternatively, companies may desire to implement significant infrastructure improvements at a greater than marginally higher cost.

Expenditures under this category will be reimbursed at 75% of incurred costs, subject to availability of funds, with the exception of street-related work coordinated with the City as provided under Program Coordination, in which case the reimbursement will be up to 100%.

Category 2 funding awards will be based on the following criteria:

- (1) The extent to which the investment reflects the needs of local government and the business community regarding utility infrastructure in Lower Manhattan through:
 - a. increased resiliency of utility service;
 - b. increased capacity of utility service; and
 - c. other benefits of technology and advanced utility infrastructure.
- (2) The scope of the project proposal given the amount of funding requested.

The deadline for submittal of documented incurred permanent service restoration and improvement costs was December 31, 2004. A final settlement of all claims by utility service providers under Categories 1, 2, and 3 was reached in December 2010. This settlement established the total funding for Category 2 to be \$207,033,415.

Category 3 - Service Interference - \$116,517,678

Service interference costs pertain only to movement of existing utility infrastructure, but not to the placement of new infrastructure.

New York City has received monies from the Federal Emergency Management Agency (FEMA) and the Federal Highway Administration (FHWA) for street repairs and restoration to be accomplished over the five-year span designated by the FHWA plan. LMDC received funds from HUD (for this program) to help the utilities permanently restore damaged infrastructure and facilities, much of which is located under City and State streets. Coordination efforts among City

and State sponsored street restoration with utility infrastructure restoration will make maximum use of allocated federal funds, while minimizing costs and disruptions.

Funds were made jointly available to the utilities and the City or the State to pay for service interference costs associated with City or State street restoration. In this manner coordinated expenditures accrued to the benefit of all parties and ensure that utilities are not responsible for incurring these costs.

The deadline for applications and submission of cost documentation under this category was December 31, 2007. While the original allocation to Category 3 was \$60 million, claims totaling over \$250 million were submitted. The review and audit of eligible costs by EDC/ESD concluded that verified submissions by utility service providers totaled more than \$180 million. In order to allow a greater portion of the verified claims to be paid, on October 8, 2010, the fourth amendment to this partial action plan reallocated an additional \$40 million to Category 3 from Category 4 (\$35 million) and Category 5 (\$5 million), raising the allocation in Category 3 to \$100 million. That reallocation implemented the stated policy of moving funds from lower priority categories to higher priority categories in the event of a funding shortfall in a higher category.

A final settlement of all claims made by utility service providers under Categories 1, 2, and 3 was reached in December 2010. This settlement increased the total funding for Category 3 to \$116,517,678. The Fifth Amendment reallocated an additional \$16,517,678 from Category 2 to Category 3 to provide the final funding amounts associated with this settlement.

Category S – Other World Trade Center Area Improvements - \$196,617,913

Funds in this category would assist properties and businesses damaged by, and economic revitalization directly related to, the September 11 terrorist attacks on New York City. Funding for Other World Trade Center Area Improvements will fund activities and costs associated with World Trade Center Memorial and cultural facilities, and affordable housing, education, infrastructure, open space, quality of life, transportation, and economic development projects benefiting the area. In the fifth amendment to the Partial Action Plan, this category was funded by a \$90,169,006 reallocation from the amounts allocated to but no longer needed to fund the approved claims under the existing Category 1, and by a \$106,448,907 reallocation of amounts not needed to fund the final determinations on the claims in the existing Category 2. \$35 million was initially allocated for the World Trade Center Memorial and Museum and the remaining funds were set aside for “Other World Trade Center Area Improvements (TBD)”. The sixth amendment to the Partial Action Plan added three new activities: World Trade Center Performing Arts Center (\$100 million), Pedestrian Bridge over West Street at West Thames Street (\$20 million), and East River Waterfront Esplanade and Piers (\$17 million). A subsequent amendment added an additional \$2.5 for the World Trade Center Memorial and Museum.

A. World Trade Center Memorial and Museum - \$37.5 Million

Up to \$37.5 million will be provided for costs associated with the WTC Memorial/Museum. This amount is in addition to previous allocations in Partial Action Plans 8, 11, 12, and the Final Action Plan for planning, design, construction, and exhibitions for the WTC Memorial/Museum. Specifically, additional funds would be allocated as follows:

- i. \$25 million for construction of the Memorial/Museum.
- ii. \$7.5 million for the Memorial Museum Pavilion, which serves as the entrance to the Museum (formerly known as the Visitor Orientation and Education Center), to cover costs of construction and fit-out, including expenses relating to security screening, information technology, auditorium, and special features in the area of the signature tridents from the original Twin Towers.
- iii. \$2.5 million to plan and manage safe public access to the Memorial starting with its opening in September 2011, including creation of temporary visitor orientation and screening facilities, pedestrian safety services, wayfinding signage, construction fencing, bus management, and interim communications systems.
- iv. \$2.5 million to pay for equipment, media production, and furnishings for multi-media installations at the National September 11 Memorial Museum.

B. World Trade Center Performing Arts Center - \$100,000,000.

Up to \$100 million will be provided for the Performing Arts Center's construction costs and strategic planning efforts. The strategic planning efforts will include the creation and administration of a non-profit entity dedicated to the Performing Arts Center. The World Trade Center Memorial and Cultural Program provides for cultural uses on the rebuilt World Trade Center site. In support of that Program, LMDC has already allocated \$60,004,000 for planning, development, preliminary implementation, and construction of the World Trade Center Performing Arts Center in Partial Action Plans 8 and 11, as amended.

C. Pedestrian Bridge over West Street at West Thames Street. \$20,000,000.

Up to \$20 million for costs associated with the design and construction of a pedestrian bridge spanning West Street in the vicinity of its intersection with West Thames Street. The eastern landing of the bridge will be to the north of the MTA-owned Brooklyn Battery Garage and the western landing will be in the vicinity of the Battery Park City Esplanade along West Street. The new pedestrian bridge will create an alternate safe crossing of West Street and provide an improved connection between Battery Park City with its open spaces, recreational facilities, residences and commercial buildings and the rest of Lower Manhattan.

D. East River Waterfront Esplanade and Piers. \$17,000,000.

Up to \$17 million for four components of the East River Water Esplanade and Piers Project: (a) walkway improvements along the Battery Maritime Building; (b) improvements to the area between Piers 15 and 16; (c) improvements to the area

between Catherine and Pike Slips, including infrastructure work; and (d) widening and upgrading of the land in the area of Pier 42 to provide a connector from the waterfront to East River Park. LMDC funded the East River Waterfront Development Study (Waterfront Study) that concluded in 2005 with an overall plan for the eastern waterfront in Lower Manhattan. The plan gave rise to several projects that are funded by LMDC, notably the East River Waterfront Esplanade and Piers (Esplanade Project) and the East River Waterfront Access (Access Project). Partial Action Plan 10 describes these projects and allocates a total of \$150 million to the Esplanade Project and the Access Project.

E. Other World Trade Center Area Improvements (To be Determined) - \$22,117,913

Additional projects associated with World Trade Center Memorial and cultural facilities, and affordable housing, education, infrastructure, open space, quality of life, transportation, and economic development projects benefiting the area that are to be funded will be identified in future Partial Action Plan amendments which will be made available for public comment.

LMDC solicited community input regarding potential uses for these funds at a Public Forum in October 2010. Individuals, elected officials, and representatives of community organizations and other not-for-profit organizations provided oral and written testimony regarding the proposed reallocation of these funds.

II. Program Administration

The Initial Partial Action Plan reserved \$15 million for costs related to ESD/EDC administration of the program as well as LMDC's oversight. The Second Amendment allocated an additional \$2.5 million for these costs, raising the total allocation to \$17.5 million, approximately 2% of the total funding.

The Initial Plan reserved \$3.5 million for program monitoring costs by LMDC and \$7.5 million to be administered by ESD for program management costs. The Amended Plan allocates an additional \$2.5 million for ESD and LMDC program management, raising this allocation to \$10 million. Program administration costs included program publication, review of proposed infrastructure investments, environmental review clearance, financial evaluation and processing of funding requests, and auditing of disbursed funds. The additional \$2.5 million will be used for processing of funding requests and auditing of disbursed funds as well as general LMDC program administration activities.

The initial Plan set aside \$4 million to upgrade the NYCDOT permit and construction administration system known as MOSAICS. The plan described how the upgrade would facilitate and improve permit administration, construction planning, and program audit functions for the level of work proposed by the Partial Action Plan. The seventh amendment to the Partial Action Plan revised the purpose and description of this work as described below.

In order to improve permit administration and construction coordination during the ongoing rebuilding in Lower Manhattan, the NYC Department of Transportation will develop a new

Lower Manhattan Permit Management System to help coordinate potentially conflicting projects, facilitate permit administration, reduce application errors, and make data available to all stakeholders. The system will include a map-based web system and it will benefit all future government and private entities that need street and sidewalk permits to implement their Lower Manhattan programs and projects.

Any unused funds from Program Administration may be reallocated to meet funding needs in other categories.

III. 130 Liberty Street Deconstruction

Partial Action Plan 7 funded the acquisition of the property at 130 Liberty Street in August 2004 as well as subsequent costs to insure, manage, monitor, abate and deconstruct the building at the site. The costs associated with the abatement and deconstruction is currently estimated to exceed the amounts allocated in Partial Action Plan 7. In September 2008, the first amendment to this partial action plan allocated \$37.5 million to a new category entitled 130 Liberty Deconstruction Program. In January 2010, a third amendment to this partial action plan allocated an additional \$15 million to this Program, increasing the total allocation to \$52.5 million.

LMDC will seek to recover costs for the 130 Liberty Program from a number of third parties. Recovery will be sought from the general contractor based on the terms and conditions of the Deconstruction Contract and related agreements, including available contract claims for indemnification and insurance. LMDC sought and obtained contributions from the prior insurers of the building in accordance with a Deconstruction Funding and Settlement Agreement, and from Deutsche Bank related to the cost of abatement of hazardous material that existed in the building before September 11, 2001. Any funds recovered would be used first to pay any additional 130 Liberty Program costs and any remaining funds may be reallocated to the URIR/OWTC Program above, subject to appropriate public comment and approval by HUD.

IV. Public Comments and Responses

A. Comments received following the release of the initial Partial Action Plan.

The following section details the comments and responses relating to the draft Partial Action Plan, after it was released for public comment from May 28, 2003 through June 12, 2003.

LMDC received 14 public comment submissions from the groups, businesses, elected officials, and individuals listed below relating to Partial Action Plan S-2 (\$750 million).

The comments are summarized in bold, with responses following.

The Partial Action Plan for infrastructure repair and reimbursement for the cost of rebuilding infrastructure is supported and should be approved.

Eight comments expressed general support and agreement with the Partial Action Plan (Plan). Four comments, including one from Manhattan Borough President C. Virginia Fields, supported

Consolidated Edison's eligibility for reimbursement for the rebuilding of infrastructure in Lower Manhattan. One comment expressed support for both Con Edison and Verizon, with respect to cost recovery and apportionment from the partial action plan. No further response is needed.

The Plan should not allow for reimbursement for expenditures that relate to “new” construction. Congressman James Walsh commented that "in order to be consistent with Congressional intent the 'Proposed Partial Action Plan for Utility Restoration and Infrastructure Rebuilding' should focus primarily on the restoration of the destroyed utility infrastructure. Expenditures related to new or enhanced facilities that have no relationship to the equipment damaged or destroyed in the attack should not be as high a priority when considering what activities to reimburse. "

The Plan identifies two objectives: 1) to protect businesses and residential customers from bearing the cost of the infrastructure rebuilding; and 2) to enhance the revitalization and redevelopment of Lower Manhattan as a world-class commercial and residential community by encouraging investment in energy and telecommunications infrastructure. Some investment in new infrastructure may benefit the customers of Lower Manhattan and is allowed for by this Plan. The Plan ranks service restoration and the rebuilding of damaged utility infrastructure as the highest priority and has structured the use of funds to address this first in recognition of Congressional intent for the appropriation.

Emergency services and temporary restoration, permanent restoration and service interference should be prime priorities of the plan.

The Plan has been modified to more clearly rank these priorities in order. Reimbursement for uncompensated losses for emergency and temporary restoration of service is the highest priority, followed by permanent restoration of infrastructure and then service interference.

The Plan should lower the priority for reimbursement of facilities that upgrade in a significant manner the equipment damaged in the attack.

Some of the equipment and facilities damaged by the attacks were technologically outdated. Customers are better served if the outdated equipment and infrastructure is upgraded when it is replaced. The NYS Department of Public Service will work in partnership with Empire State Development (ESD) to evaluate all expenditures submitted by the utilities under this Plan, and will consider the necessary and appropriate contributions of such upgrades. To the extent that upgrades fulfill the permanent restoration of infrastructure, they fall within the second highest priority of the Plan, and are limited to reimbursements of not more than 75% of otherwise uncovered costs.

The allocation of program funds is confusing and should clearly state that Tier 1 and Tier 2, category 2 – permanent restoration, are the main priorities of the plan.

Language clarifying the prioritization of funding categories has been incorporated, as noted above. The Plan has been modified to eliminate the use of “Tiers” and allocates funds to six “Categories” of eligible activity, organized in priority order.

Permanent restoration expenditures for energy facilities should be 100 percent reimbursable.

As estimates of uninsured utility damages exceed the \$750 million appropriated by Congress, it will not be possible to reimburse 100% of expenditures for permanent restoration. It must also be recognized that a percentage of expenditures for permanent restoration may not qualify for reimbursement from the authorized funding, in that certain upgrades and improvements of the infrastructure and related expenses may be recovered through other sources, such as extant utility rates and litigation.

The \$750 million grant is a vehicle to reward the under-insured stockholders of the utilities.

The primary objectives of the plan are (1) to protect business and residential customers from bearing the cost of the infrastructure rebuilding; and (2) to enhance the revitalization and redevelopment of Lower Manhattan as a world-class commercial and residential community by encouraging investment in energy and telecommunications infrastructure. The utilities suffered extensive damages, much of that uninsured. The utilities also responded rapidly to restore service, and have carried the costs of damage and service restoration. Congress appropriated this fund in order to protect the ratepayers (business and residential customers alike) from bearing the costs of this damage and recovery in the form of higher utility rates. In addition, in order to maximize Lower Manhattan's ability to retain and attract businesses, utility rates must remain competitive with other major cities. The estimates of uninsured utility damages far exceed the funding appropriated by Congress for this purpose. No "reward" or windfall will be realized by any of the affected utilities.

The definition of "substantial amendment" should be modified to substitute "category" for "tier," concerning the reallocation of funds.

The reference to "tier" has been removed and a finite dollar threshold from the definition of "substantial amendment" has also been eliminated.

Please explain the New York City MOSAICS system and describe how its upgrade constitutes assistance for properties damaged by or economic revitalization directly related to the terrorist attacks.

The NYC Department of Transportation (DOT) manages the City streets and sidewalks. MOSAICS is an information management application designed to track and print permits that allow private and public entities to use the streets and sidewalks for various purposes. The attacks on the WTC created extensive and unanticipated demands to permit emergency and restoration projects. The improved MOSAICS system will facilitate the permitting process for utility infrastructure restoration and ensure the rebuilding of Lower Manhattan in the least disruptive way possible. The revised Plan has adjusted the allocation for the MOSAICS system to \$4.0 million, and restored \$3.5 million to rebuilding activities.

Information supplied to LMDC under the Partial Action Plan should be afforded all lawful exemptions from public disclosure under the state Freedom of Information Law (FOIL) (i.e., pursuant to Public Officers Law Sec.87 (2)(d) and (I) and Sec.89(5)).

Applicants to the fund may request protection for competitive and trade sensitive information under the state Freedom of Information Law (FOIL) as cited. Competitive information is also protected by federal law under 5 US Code 552(b)(4), and in federal regulation 24CFR15.3(a)(4), provided that relevant pages are marked “confidential.”

Multiple comments address the process of coordinating utility work with City street work and the ESD/EDC role in coordinating that work. Comments included the following points:

- **Additional clarification should be provided to the language addressing coordination of street interference with the city to provide that work initiated prior to publication of the Draft Action Plan does not require such coordination in order to be eligible for 100 percent reimbursement.**
- **Each participating carrier should be permitted to include construction of its own facilities on a non-discriminatory basis with reasonable, cost-based pricing (to the extent not 100% reimbursed pursuant to the plan).**
- **Utilities and LMDC must create clear guidelines for coordination, and those guidelines should not create burdensome obligations that make it impossible to timely serve customers or place monopoly control over facilities construction in the hands of a single entity.**
- **Participatory utilities should be consulted in choosing contractors in order to ensure their requirements for vendor certification can be addressed.**
- **An adequate joint construction notification system should be implemented to allow all interested utilities to participate in a build.**
- **Coordination guidelines should address a utility’s right to own and control access to cable installed on its behalf.**
- **Prompt, realistic build time frames must be established.**
- **It should be clear that the requirement for coordination applies solely where proposed construction will involve disruption of public streets and rights-of-way, and not to installation of facilities and infrastructure that are not disruptive or occur on private property.**
- **LMDC must work closely with all utilities and building owners to ensure timely and cost effective access to buildings.**

These comments pertain to the program coordination requirements of the Plan and the ESD/EDC desire to coordinate the efforts of federal and state grant programs to the fullest extent possible. As called for in the Plan, a joint plan will be developed with ESD/EDC and affected utilities to provide for the coordination of work as requested. However, for work that is completed before the plan was published, as well as for subsequent, non-coordinated work, reimbursement will be limited to not more than 75% of unreimbursed expenditures. Only coordinated work will be eligible for up to 100% reimbursement. Utilities are able to complete any necessary work for restoration of permanent infrastructure. This sole provider cost will be reimbursed at up to 75% of actual, unreimbursed, and documented costs.

Utilities receiving grants under this program should be required to provide utility service at a reduced rate to Lower Manhattan small businesses for the next three to five years.

Grants provided to utilities through the Partial Action Plan are intended to minimize the impact of rate increases that could be authorized to offset unreimbursed infrastructure losses. In this way, rate impact is being addressed. The grants to be provided to eligible utilities do not represent or constitute a windfall for utilities.

The partial action plan should improve wireless connectivity in Lower Manhattan by allocating funding in the amount of \$10 million for the creation of a Wireless Redundancy System.

Lower Manhattan is already well served by several competitive wireless service providers and wireless technologies. Because the redundant infrastructure referenced in the comment currently exists as a result of the demands of the marketplace, allocating partial action plan funds would serve to create a shortfall for utility reimbursement.

Comments to the Draft Partial Action Plan were received from:

Asian American Business Development Center
Association for a Better New York (ABNY)
AT&T
Eddie Batiz – Remy Lounge
Albert K. Butzel
Capsouto Freres Restaurant
Consolidated Edison
Council on the Environment of New York City
C. Virginia Fields, Manhattan Borough President
From the Ground Up
Lower Manhattan Cultural Council
Lower Manhattan Telecommunications Users Group
New York Building Congress (NYBC)
The Battery Conservancy
Verizon
James T. Walsh, Member of Congress, 25th District of New York

B. Comments relating to amendments released for comment in August 2010.

LMDC received 29 public comments relating to this proposed Partial Action Plan Amendment. Comments were received from one elected official, Community Boards 1 and 2, Lower Manhattan civic groups, community service providers, businesses, individuals, private utility providers, the New York State Department of Public Service, and utility consumer groups.

1. The majority of comments (22) supported the proposed amendments and advocated for specific projects or types of projects. Funding suggestions included affordable housing, economic development, additional programs for small business, programs for schools, and additional funding for the Memorial.

As stated in the proposed amendment that was released for comment, “A subsequent plan specifying projects to be funded and levels of support to be provided will be the subject of an amendment that will be made available for public comment in the future.” LMDC will consider comments received when preparing the subsequent plan that will identify specific projects to be funded.

2. LMDC received seven comments that were opposed to the proposed amendment. All seven of the comments noted that not providing the funding to the utility companies could cause the rates charged by these companies to go up. Some comments also asserted that the proposed amendments were inconsistent with Congressional intent.

The allocation of funds in the proposed amendment was made by LMDC with consideration of the potential impact on privately owned utility companies and their customers as well as the potential benefit to Lower Manhattan residents, businesses, visitors, and workers of funding other projects. The proposed allocation strikes a balance between these competing needs and interests. Even if the maximum proposed reallocation is made, PAP S-2 will provide a total of approximately \$467 million for privately-owned utility companies, all of which should benefit their customers by offsetting costs that were not covered by insurance.

The legislation that provides the funding for PAP S-2 states that “funds may be used for assistance for properties and businesses (including the restoration of utility infrastructure) damaged by, and for economic revitalization directly related to, the terrorist attacks on the United States that occurred on September 11, 2001, in New York City.” Consistent with this legislation, PAP S-2 and the proposed amendment, allocate funding to damaged businesses and properties, utility infrastructure, and economic revitalization.

The proposed amendments to PAP S-2 will provide a minimum of \$367.5 for the highest priority categories of utility infrastructure work – Emergency and Temporary Service Response and Permanent Restoration and Infrastructure Improvements. This funding level will be sufficient to reimburse private utilities for all eligible expenses in these categories, thus providing funds to pay for all eligible costs related to the restoration of utility infrastructure damaged by the September 11th attacks. Only funds not needed to pay these costs will be reallocated by the proposed amendments.

C. Comments relating to amendments released for comment in October 2010.

LMDC received 2 public comments relating to this proposed Partial Action Plan Amendment. Comments were received from one elected official and one individual.

1. The comment from the individual advocated funding for a specific project.

As stated in the proposed amendment that was released for comment, “A subsequent plan specifying projects to be funded and levels of support to be provided will be the subject of an amendment that will be made available for public comment in the future.” LMDC will consider the comments received in response to this proposed amendment when preparing the subsequent plan that will identify specific projects to be funded.

2. The comment from New York State Assembly member Debra Glick was in favor of the allocation of funds to provide support for businesses and residents in Lower Manhattan and the public input that LMDC has sought regarding the allocation of these funds. The comment also advocated for an allocation process that involves a request for proposals.

The Partial Action Plan amendment process includes public involvement that necessitates publication of the proposed reallocation and solicitation of public comment. In addition to that required process, LMDC solicited comment via its web site and conducted a public forum on October 21, 2010 at which LMDC received oral and written testimony from a large number of individuals, public officials, and representatives of nonprofit organizations. While these methods do not involve a formal request for proposals, they do not preclude identification of specific projects for funding. At the same time, LMDC solicited input regarding community needs irrespective of the projects that may address those needs. LMDC may utilize a request for proposal process in the allocation of funds where such a process is deemed appropriate by LMDC.

D. Comments relating to amendments released for comment in April 2011.

LMDC received one public comment relating to this proposed Partial Action Plan Amendment. The comment was from Manhattan Community Board 1 expressing full support of the proposed amendment.