

LOWER MANHATTAN DEVELOPMENT CORPORATION

Meeting of the Directors

Conducted Via Teleconference

November 17, 2021

MINUTES**In Attendance
Directors**

Holly Leicht, Chair
 Alicia Glen
 Catherine McVay Hughes
 Thomas Johnson
 Joshua Kraus
 Pedram Mahdavi
 Mehul Patel

Staff Attending:**For Lower Manhattan Development Corporation:**

Daniel Ciniello, President
 Stephen Konopko, Vice President, Internal Audit
 Debbie Royce, Corporate Secretary
 Goldie Weixel, Deputy General Counsel - ESD

For Empire State Development

Matthew Acocella, Associate Counsel
 Tobi Jaiyesimi, Assistant Vice President - Real Estate &
 Community Relations

The meeting of the Lower Manhattan Development Corporation (“LMDC”) was called to order at 3:30 p.m. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

The Chair noted for the record that due to the public health concerns and in accordance with current legislation, this meeting would be conducted by teleconference. The Chair also noted for the record that the public was given the opportunity to comment on Agenda items by submitting

written comments on or before 12:00 p.m. yesterday to publiccomment@renewnyc.com. The Chair further noted that seventeen (17) comments were received which were distributed to the Directors and were posted on the LMDC website with all of today's Board material.

Before beginning with the substantive portion of the meeting the Chair asked the Directors whether anyone had any potential conflicts of interest with respect to any of the items on the proposed Agenda.

Hearing no conflicts, the Chair called for a motion to approve the Minutes of the Directors' meeting of March 31, 2021. Noting no corrections, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Approval of Minutes

RESOLVED, that the Minutes of the meeting of the Corporation held on March 31, 2021, as presented to this meeting, are hereby approved and all actions taken by the Corporation's employees, officers or Directors in furtherance of the matters referred to therein are hereby ratified and approved as actions of the Corporation.

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The Chair then called on Director McVay Hughes to provide the Corporation's Audit and Finance Committee Report on behalf of Committee Chair, Director Johnson, for the Directors' information.

Director McVay Hughes noted that the Committee recently met to review the material that is being presented at today's meeting.

Director McVay Hughes explained that the Committee briefly discussed the three items authorized through LMDC's Emergency Contract Authorization Policy regarding the office space extension and the City and State Affordable Housing Programs which will be presented for ratification at this meeting and that it supports the ratification by the full Board.

Director McVay Hughes stated that the Committee reviewed the LMDC administrative budget variance report that reflected spending through September 2021 and noted that spending was slightly less than the approved budget for the first half of this fiscal year.

It was also noted that the Committee reviewed and discussed the proposed action plan amendments that would keep available funds from completed or fully funded activities to the affordable housing activity for use by the City of New York Housing Preservation and Development for ongoing NYCHA property renovations and it also reviewed and discussed the funding request for the three qualified legal counsel contracts.

Director McVay Hughes advised the Committee received updates on Site Five and discussed the proposed Modified General Project Plan and related actions described in the materials and fully supports the requested approvals by the full Board.

Lastly, it was noted the Committee met with a representative from EFPR Group, LMDC's external auditor to discuss their most recent annual audit and the results and it was further noted that there were no issues or concerns identified during its annual audit. Director McVay

Hughes also noted that the Committee met with the Corporation's Internal Auditor and that no significant issues were identified through ongoing internal audits.

The Chair thanked Director McVay Hughes for the Committee Report then called on Mr. Ciniello to present the Administrative items on the Agenda.

Mr. Ciniello then presented requests for ratification of three emergency actions taken by LMDC staff, and which were approved by the LMDC Chair and the Finance Committee in accordance with LMDC's emergency authorization policy. Mr. Ciniello first presented a request that the Board ratify the Amendment and Extension of LMDC's Office Space Agreement.

Following a full presentation of the item and hearing no response to a call for questions or comments from the Directors, upon motion duly made and seconded, the following Resolution was unanimously adopted:

Ratification of Office Space Contract Amendment

RESOLVED, that the Corporation is hereby authorized to amend its agreement with The Counsel of State Governments, LTD. (CSG) for use of a portion of its office space located at 22 Cortlandt Street, 22nd Floor, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that such agreement shall be extended for a 15-month term, commencing July 15, 2021 for an additional \$124,000, to an amount not to exceed \$245,400, with a six month option, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED that the expenditures approved hereby shall be allocated from the Corporation's Fiscal Year End (FYE) 2022 Administration Budget and the anticipated FYE 2023 Budget; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

FURTHER RESOLVED, that all such actions previously taken in furtherance of the foregoing by the Corporation's employees, Officers or Directors are hereby ratified and approved in all respects.

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Mr. Ciniello then presented a request to ratify the Final Action Plan Amendment and City of New York Department of Housing and Preservation and Development Subrecipient Agreement Amendment. Mr. Ciniello explained that this action was taken between LMDC Board Meetings so that the renovation work could commence as soon as possible.

Chair Leicht asked Mr. Ciniello to clarify that this action is to amend the subrecipient agreement, but not an increase of the contract's dollar amount.

Mr. Ciniello confirmed that this item would approve a change in scope to include five (5) additional NYCHA properties to the scope of work.

Hearing no response to a call for further questions or comments from the Directors, upon motion duly made and seconded, the following Resolution was unanimously adopted:

Ratification of Final Action Plan Amendment and City of New York Department of Housing Preservation and Development Subrecipient Agreement Amendment

RESOLVED, that the Corporation is hereby authorized to amend the Final Action Plan and its subrecipient agreement with the City of New York Department of Housing Preservation and Development to expand the scope of Affordable Housing projects, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the scope changes approved hereby shall be funded through the existing contract by way of the Final Action Plan; and be it

FURTHER RESOLVED, that the officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing; and be it

FURTHER RESOLVED, that all such actions previously taken in furtherance of the foregoing by the Corporation's employees, Officers or Directors are hereby ratified and approved in all respects.

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Next, Mr. Ciniello presented a request to ratify the authorization for funding in an amount not to exceed \$110,000 to New York State Homes and Community Renewal ("HCR") for preliminary and other audit work necessary to create a scope, cost, and schedule for possible weatherization improvements to five (5) affordable housing properties in lower Manhattan.

Following the full presentation and hearing no comments from the Directors, upon motion duly made and seconded, the following Resolution was unanimously adopted:

Ratification of New York State Homes and Community Renewal Funding Authorization

RESOLVED, that the Corporation is hereby authorized to execute a subrecipient agreement with New York State Homes and Community Renewal for preliminary and other audit work necessary to determine a detailed scope, cost and schedule for possible weatherization improvements to five affordable housing properties in lower Manhattan in an amount not to exceed \$110,000, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds included in the Affordable Housing allocation in the Final Action Plan; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing; and be it

FURTHER RESOLVED, that all such actions previously taken in furtherance of the foregoing by the Corporation's employees, Officers or Directors are hereby ratified and approved in all respects.

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The Chair then called on Mr. Ciniello to present the two Funding Authorization Request items on the Agenda.

Mr. Ciniello presented a request to amend Partial Action Plan 10, the Final Action Plan, and increase the City of New York Housing Preservation and Development Agreement amount. He explained that this item relates to the emergency action taken regarding the HPD contract. He further explained that the purpose of this request is to authorize to submit for public comment and review by the U.S. Department of Housing and Urban Development a proposal to amend activities in Partial Action Plan 10 and the Final Action Plan for the purpose of transferring up to \$1,180,000 of funds that are available, to the Affordable Housing Activity.

Mr. Ciniello explained that this would allow LMDC to increase funding available in the City of New York Housing Preservation department contract for the completion of ongoing rehabilitation work on NYCHA properties.

In response to a question from Chair Leicht regarding the scope of work covered by these funds for NYCHA, Mr. Ciniello explained that the funds would cover floor restoration work and painting at five (5) NYCHA properties.

Hearing no further questions or comments from the Directors, upon motion duly made and seconded, the following Resolution was unanimously adopted:

Authorization to Amend Partial Action Plan 10 and the Final Action Plan and Increase the City of New York Department of Housing Preservation and Development Agreement Authorization

RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plan 10 and the Final Action Plan to the extent necessary, by reducing residual allocations in the East River Waterfront Esplanade and Piers, Chinatown Projects, Transportation Improvements, Neighborhood Parks and Open Spaces and West Thames Street Bridge activities, and increasing the Affordable Housing activity from \$12,800,000 to \$13,980,000, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to increase the City of New York Department of Housing Preservation and Development subrecipient agreement authorization by an amount up to \$1,075,000, to an amount not to exceed \$13,755,000 as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to submit for public comment and review by the federal Department of Housing and Urban Development (“HUD”) the Amended Action Plans, as may be required; and be it

FURTHER RESOLVED, that the President of the Corporation or his designee shall be authorized to make such changes to the Amended Action Plans as may be necessary or

appropriate to comport with applicable HUD requirements and to reflect any public comments solicited and received thereon; and be it

FURTHER RESOLVED, that all such actions previously taken in furtherance of the foregoing by the Corporation's employees, Officers or Directors are hereby ratified and approved in all respects.

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

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Mr. Ciniello next presented a request to amend and extend the Pre-Qualified Legal Counsel Services Contracts for legal work related to World Trade Center Site 5. Mr. Ciniello explained that this item would increase the value of the contract for legal counsel, and invited Goldie Weixel, Acting General Counsel of Empire State Development ("ESD"), to provide further explanation and comment.

Ms. Weixel explained that this item would extend contracts with one or more counsel on ESD's pre-qualified counsel list through December 2023, and would increase the contract value by up to an additional \$2,450,000 for all legal services in the aggregate. Ms. Weixel explained that this authorization would allow LMDC to continue to use pre-qualified firms, including but not limited to Carter Ledyard & Milburn LLP and Venable LLP for environmental, real estate, and land use services related to World Trade Center Site, particularly with respect to work related to Site 5.

In response to a question from Director Glen, Ms. Weixel and Tobi Jaiyesimi, World Trade Center Site 5 Project Manager at ESD, explained that LMDC does not advance any

payment for these legal expenses, as most if not all of the work is paid directly from an imprest account funded by the conditionally-designated developer.

Hearing no further questions or comments from the Directors, upon motion duly made and seconded, the following Resolution was unanimously adopted:

Authorization to Amend and Extend the Pre-Qualified Legal Counsel Services Contracts

RESOLVED, that the amount of the Corporation's expenditures authorized under the agreements and amendments with one or more law firms on the Empire State Development Pre-Qualified Counsel List shall increase by \$2,450,000, to an amount not to exceed \$6,850,000 in the aggregate, and the term of such agreements shall be extended through December 31, 2023, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds included in the appropriate LMDC FYE 2022 and anticipated FYE 2023 Administrative Budgets, relevant Partial Action Plans, or funds paid by the World Trade Center Site 5 developer; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing; and be it

FURTHER RESOLVED, that all such actions previously taken in furtherance of the foregoing by the Corporation's employees, Officers or Directors are hereby ratified and approved in all respects.

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The Chair then called on Ms. Jaiyesimi to present the action item related to World Trade Center Site 5.

Ms. Jaiyesimi explained that the Directors were being asked to take the following seven (7) actions with respect to the World Trade Center site, and Site 5 in particular: (1) adopt

Modifications to the World Trade Center Memorial and Cultural Program Land Use Improvement and Civic Project Plan, to allow for mixed-use development, including residential, fitness, and community facility space, in addition to the already approved commercial use; (2) override applicable Local Zoning Regulations to effectuate the proposed modifications; (3) authorize staff to hold a public hearing on the proposed modifications; (4) accept the proposed Environmental Assessment of the proposed modifications; (5) approve Findings of No Significant Impact, pursuant to the National Environmental Policy Act; (6) make a Determination of Non-Significance, pursuant to the New York State Environmental Quality Review Act; and (7) authorize acceptance of public comments on the above.

Ms. Jaiyesimi explained that these actions launch the public review and approvals process for the proposed modifications to the General Project Plan, and that no final determinations would be made by the Directors at today's meeting.

Ms. Jaiyesimi next reviewed the background of Site 5 and the process of selecting a conditionally-designated developer after a competitive Request-for-Proposal ("RFP") process. She explained that in February 2021, a mixed-use development, proposed by a team comprising Silverstein, Brookfield, Omni, and Dabar, was conditionally designated by the LMDC Directors. She noted that if the transaction is approved, ESD, LMDC's parent corporation, would own Site 5 and serve as landlord for the Site 5 long-term lease, and that all rent payments would go to the Port Authority of New York and New Jersey ("Port Authority") as compensation for the Memorial, Museum and Performing Arts Center sites.

Ms. Jaiyesimi explained that the Directors are not being asked to consider or approve the property transaction from LMDC to ESD at this meeting. She further explained that the proposed modifications to the GPP would permit either a commercial project or a mixed-use project on Site 5, and that any specific transaction with the conditionally-designated developer would require additional board action at a later date. She noted that proposed design guidelines which would govern mixed-use development at the site have been included in these materials. She further noted that as discussions continue with the public and with the conditionally designated developer, these design guidelines may be adjusted consistent with the ultimately approved project.

Ms. Jaiyesimi next provided background on the public engagement process following conditional designation of the developer, including LMDC launching a WTC Site 5 community advisory committee (“CAC”), comprised of elected officials and other local leaders and stakeholders. She noted that LMDC and ESD staff had been regularly presenting at the local Community Board (“CB1”) meetings and that feedback from the CAC and CB1 has been instrumental in shaping multiple aspects of the proposed mixed-use Project option.

Ms. Jaiyesimi also noted that that affordable housing has been a major discussion point on the project over the last few months. She explained that the Site 5 RFP required that any mixed-use proposal comply with the affordability requirement of the City’s Mandatory Inclusionary Housing program. She further explained that the proposed Project would include

approximately 1,200 residential units, and that, in consultation with the City, it was determined that 25% of the units, or approximately 300 units, would be affordable to households making an average of 50% of Area Median Income, which currently equates to \$41,800 for an individual, scaling up to \$59,650 for a family of four. She noted that requests from community representatives and elected officials for increased affordable housing at the site. She further noted that the Project Team is in ongoing discussions about these requests and will participate in an upcoming public forum being sponsored by the local elected officials on the issue.

Ms. Jaiyesimi next explained that, in terms of next steps, with the Directors' approval, LMDC, ESD and the Port Authority will continue robust public engagement on the proposed Project in the coming months. She explained that, if authorized by the Directors, LMDC and ESD would hold a joint public hearing, anticipated to be held on January 12, 2022, followed by a public comment period ending February 15, 2022. She further explained that in Spring 2022, staff anticipates returning to the Directors for further consideration of the proposed modifications to the GPP and the proposed Project.

In response to a question from Director McVay Hughes, Ms. Jaiyesimi detailed the number of presentations to the Community Board that had been made thus far on the Site 5 project. She advised that ESD/LMDC staff had presented to at least four (4) Community Board 1 meetings, including the Land Use Committee, the Executive Committee, or the CB1 general meeting agenda. She also stated that all of those presentations had been made available to

CB1, and that she would follow up with CB1 regarding posting the presentations on the CB1 and LMDC websites.

Ms. Weixel explained that this was the beginning of the approvals process for Site 5, and noted that the public hearing would not occur until the middle of January 2022, with an additional minimum 30-day comment period thereafter.

Hearing no further questions or comments from the Directors, upon motion duly made and seconded, the following Resolution was unanimously adopted:

Authorization for New York City (New York County) – 5 World Trade Center; World Trade Center Memorial and Cultural Program Land Use Improvement and Civic Project – Land Use Improvement and Civic Project Findings; Acceptance of Environmental Assessment; Determination that No Supplemental Environmental Impact Statement is Needed Pursuant to National Environmental Policy Act and State Environmental Quality Review Act and their implementing regulations; Adoption of Modified General Project Plan; Override of Local Zoning Regulations and Other Local Laws; Authorization to Hold a Public Hearing; and Authorization to Take Related Actions

RESOLVED, that, on 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 relating to the World Trade Center Memorial and Cultural Program Land Use Improvement and Civic Project, the Corporation hereby determines and finds pursuant to Section 10(c) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that:

- (1) the area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality;
- (2) the project consists of a plan or undertaking for the clearance, re-planning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto; and
- (3) the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole; and be it

FURTHER RESOLVED, that, on the basis of the Materials, the Corporation hereby determines and finds pursuant to Section 10(d) of the Act, that:

- (1) there exists in the area in which the project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the project;
- (2) the project shall consist of a building or buildings or facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes;
- (3) such project will be leased to or owned by the state or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been or will be, made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of the project; and
- (4) the plans and specifications assure or will assure adequate light, air, sanitation and fire protection; and be it

FURTHER RESOLVED, that, on the basis of the Materials, the Corporation hereby determines and finds pursuant to Section 10(g) of the Act that there are no families or individuals to be displaced from the Project area; and be it

FURTHER RESOLVED, that, on the basis of the Materials; the Corporation hereby approves, subject to public review and comment, the Environmental Assessment for the Proposed Actions attached as Exhibit C in the Materials (the "EA") for the adoption of modifications to the General Project Plan for the World Trade Center Memorial and Cultural Program (the "MGPP") and the other proposed actions described in the EA (collectively, the "Proposed Actions") in the form submitted at this meeting and finds that the EA meets the requirements of the National Environmental Policy Act ("NEPA") and the New York State Environmental Quality Review Act ("SEQRA") and other applicable laws and regulations; and be it

FURTHER RESOLVED, that, on the basis of the Materials, the Corporation hereby approves and adopts, subject to public review and comment, the proposed Finding of No Significant Impact and Determination of Non-Significance annexed as Exhibit D in the Materials ("FONSI"), copies of which document are hereby filed with the records of the Corporation, and finds that the FONSI meets the requirements of NEPA and SEQRA and other applicable laws and regulations, and determines that the Proposed Actions will not, either individually or cumulatively, have a significant impact on the quality of the human environment or a significant adverse environmental impact not already analyzed and disclosed in the Final Generic Environmental Impact Statement for the World Trade Center Memorial and Redevelopment Plan; and that no supplemental environmental impact statement is needed in connection with the Proposed Actions; and be it

FURTHER RESOLVED, that the officers of the Corporation or any such officer's designee, acting singly, be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take all actions necessary or appropriate in connection with the EA, FONSI and Proposed Actions pursuant to NEPA, SEQRA and any other applicable law, including without limitation, the providing, filing or making available of copies of the EA and FONSI and/or the acceptance of public comments; and making a report or reports thereon to the Board of Directors; and be it

FURTHER RESOLVED, that, on the basis of the Materials and subject to Section 16 of the Act, the Corporation does hereby adopt the proposed MGPP as presented to this meeting, a copy of which MGPP is hereby ordered filed with the records of the Corporation; and be it

FURTHER RESOLVED, that, on the basis of the Materials, the Corporation hereby finds, pursuant to Section 16(3) of the Act, that it is not feasible or practicable for the Project described in the Materials to comply with all local zoning and other land use regulations and, accordingly, the Corporation hereby overrides the local zoning regulations, and other local laws inclusive of the City Map and the Uniform Land Use Review Procedure, as and to the extent described in the Materials and in the MGPP for the specified purposes of the Project; and be it

FURTHER RESOLVED, that the officers of the Corporation or any such officer's designee, acting singly, be, and each of them hereby is, authorized in the name and on behalf of the Corporation to hold a public hearing on the MGPP in accordance with the requirements of the Act; and be it

FURTHER RESOLVED, that the officers of the Corporation or any such officer's designee, acting singly, be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take all actions necessary or proper, in their respective sole discretion, to comply with the requirements of the Act in connection with the adoption of the MGPP and the holding of a public hearing thereon; and be it

FURTHER RESOLVED, that the MGPP shall not be final until action is taken as provided in the Act, and until such time as all requirements of the Act and other applicable law in connection therewith have been satisfied; and be it

FURTHER RESOLVED, that the officers of the Corporation or any such officer's designee, acting singly, 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 any and all actions necessary or proper, in their respective sole discretion, as may be necessary or appropriate to effectuate the foregoing resolutions.

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Chair Leicht noted that this meeting would be the last for Director Mahdavi, and the Chair thanked Mr. Mahdavi and Deputy Mayor Been for their service to the City, LMDC, and the State.

There being no further business, the meeting was adjourned at 4:02 p.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary