

**LOWER MANHATTAN DEVELOPMENT CORPORATION**

Meeting of the Directors  
Borough of Manhattan Community College  
245 Greenwich Street – Room 1304  
13<sup>th</sup> Floor, Room 1304  
New York, New York 10007

March 8, 2018

**MINUTES****In Attendance****Directors:**

Mehul Patel, Acting Chair  
Alicia Glen Carl Weisbrod  
Thomas S. Johnson – via teleconference  
Catherine McVay-Hughes – via teleconference  
Carl Rodrigues  
Dominic Williams

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

David Emil, President  
Daniel Ciniello, Senior Vice President, Operations and CFO/Treasurer  
Stephen Konopko, Vice President, Internal Audit  
Laura Rogers, Associate Counsel

**For Empire State Development:**

Elizabeth Fine, EVP, Legal and General Counsel  
Debbie Royce, Assistant Corporate Secretary

**Also Present:**

The Public

The meeting of the Lower Manhattan Development Corporation (“LMDC”) was called to order at 9:07 a.m. by Acting Chair Mehul Patel. 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.

Next, the Acting Chair noted for the record the Corporation's policy which welcomes public comments on the items on the current Agenda.

Before beginning with the substantive portion of the meeting, the Acting Chair introduced and welcomed the newest Board member, Carl Rodrigues and then asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda.

Hearing none, the Acting Chair then called for a motion to approve the Minutes of the Directors' meeting of March 23, 2017. Noting no corrections and upon motion duly made and seconded, the following resolution was unanimously adopted:

#### Approval of Minutes

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RESOLVED, that the minutes of the meeting of the Corporation held on March 23, 2017, 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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Next, Mr. Emil presented the environmental services contract item. He noted that no additional funds were being sought at this time and staff was only seeking to extend the AKRF, Inc. contract term to allow AKRF to continue to do work on the outstanding issues. Following the full presentation, the Acting Chair then called for any questions or comments from the Directors.

Hearing none and upon motion duly made and seconded, the following resolution was unanimously adopted:

Ratification of Environmental Services Contract Extension

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RESOLVED, that the Corporation is hereby authorized to extend its contract for environmental services with AKRF, Inc., for a two-year period through September 30, 2019, 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 2018 and anticipated future Budgets for Planning and Administration or relevant Partial 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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Director Johnson, Chair of the Corporation's Audit and Finance Committee (the "Committee"), provided the Committee's Report which was being presented for the Directors' information only and would not require a vote. He noted that the Committee met on February 8<sup>th</sup> and February 27<sup>th</sup> to review the Corporation's Budget Variance Report, the proposed new annual budget, and the funding authorizations before the Board today for consideration. He stated that the Corporation continues to operate within budget and that the new proposed budget is 15% lower than the current one. He commended the staff for their persistent diligence in controlling and reducing administrative costs and encouraged the Board to approve the proposed budget.

Director Johnson further noted that the Committee supports the environmental services Board action taken. He advised the Committee thoroughly reviewed and discussed the request on today's Agenda to amend multiple action plans to supplement the previously allocated \$45 million for the acquisition of various easements and rights covering access to and use of various elements of the Performing Arts Center site. He encouraged the full Board to approve the actions necessary for the PAC to move forward. He stated the Committee also supports the other requested funding items and zero-dollar contract extensions being presented to the Board today.

Lastly, he noted the Committee also met with the Corporation's Internal Auditor and is pleased to report that no irregularities or findings have been identified.

Mr. Emil then presented the World Trade Center Performing Arts Center funding item explaining that this item, if approved, would designate the World Trade Center Performing Arts Center organization ("WTCPAC") as the recipient and user of Site 1B for cultural component on the World Trade Center Site. He noted that the funds would have to be transferred from various action plans to supplement the \$45 million dollars that had already been allocated for the Performing Arts Center in order to reach the \$48 million that would allow the WTCPAC to acquire from the Port Authority of New York & New Jersey (the "Port Authority") various easements and rights to property that will enable them to begin construction on the site.

Mr. Emil explained that the WTCPAC is in process of entering into a lease agreement with the Port Authority and that the \$48 million the Corporation transfers to the WTCPAC will fund a one-time lease payment to the Port Authority.

Director Weisbrod commended staff for working with the Port Authority to resolve issues regarding the site and to reach this agreement. He then asked if the \$48 million resolves all monies payable to the Port Authority by the LMDC and if the WTCPAC was unsuccessful and unable to operate on the site would another not-for-profit cultural institution be selected for the site, and would LMDC and the City mutually decide the replacement entity.

Mr. Emil described the history of the Corporation's dealing with the Port Authority on Site 1B and its use of Faithful + Gould to examine the value of the site. He added that with the help of the new leadership of the Port Authority an agreement was reached that \$48 million was a fair resolution. Additional scenarios were discussed that could be taken should the WTCPAC not succeed. Ms. Rogers, LMDC's Counsel, added that a Declaration of Restrictions which LMDC is the beneficiary of, will be recorded on the property at the time the lease is recorded. She added that the use of the site as a cultural center is also controlled by the General Project Plan.

Director Glen then asked if the Port Authority has released any and all claims with respect to cost. Mr. Emil explained that LMDC will be released from all Port Authority cost claims related to this site once the \$48 million is paid. However, WTCPAC may have additional costs as their design evolves.

Director Glen added that the Corporation's liability related to this piece of the puzzle is completed but it will still have to make sure the other funds that were set aside for construction are not depleted by change orders. Mr. Emil advised that those funds are only available for above grade construction and only after the Corporation reviews the final design and funding plan but things are not yet at that stage.

Director Glen asked for clarification on the lease agreement. Mr. Emil explained that LMDC is not a party to the lease which is between WTCPAC and the Port Authority. He added that the lease provides for a one-time lease payment to be made to the Port Authority for the rights and access to easements and other property interests.

Ms. Rogers added that a reciprocal easement operating agreement is in place and that what is being paid for is fairly represented in the lease which is a 99-year lease. She added that the WTCPAC will be the owners of a true real property interest in the site upon the lease execution.

Director Weisbrod commented that this action will still leave Site 5 issue to be resolved. Mr. Emil confirmed that the approvals sought today have no bearing on Site 5 which LMDC owns.

Director Weisbrod asked for a rough estimate of how much unobligated money is available after money is added to reach the \$48 million needed for the lease payment.

Mr. Emil estimated that there would be approximately \$12 million of funds likely to become available and that HUD expects those funds to be used to fill in underfunded projects that are already underway. Mr. Ciniello added that only approximately \$400,000 is unallocated while the \$12 million Mr. Emil is referring to represents a combination of available funds from completed projects and funds that may become available should approved projects not move forward.

Director Glen requested that there will be a true up of the additional funds and how they will be used. Mr. Emil agreed but noted that staff is trying to capture available funds and reallocate them to ongoing projects requiring additional funding that can be completed soon.

Acting Chair Patel asked if there were any additional questions or comments related to the Action Plans. Hearing none, upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend the Subrecipient Agreement with the WTC Performing Arts Center, Inc. and to Amend Partial Action Plans 2, 4, 10, 11 and the Final Action Plan

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RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plans 2, 4, 10, 11, and the Final Action Plan to: reallocate \$1,374,609 in unspent funds from the Small Firm Attraction and Retention Grant Activity in Partial Action Plan (PAP) 2 to the Performing Arts Center Activity in PAP 11; reallocate \$217,356 in unspent funds from the World Trade Center Business Recovery Grant Activity in PAP 4 to the Performing Arts Center Program Activity in PAP 11; reallocate \$452,680 in unspent funds from the West Street Pedestrian Connections Activity in PAP 4 to the Performing Arts Center Activity in PAP 11; reallocate \$363,297 in unspent funds from the New York Stock Exchange Activity in PAP 10 to the Performing Arts Center Activity in PAP 11; reallocate \$26,365 in unspent funds from the Lower Manhattan Street Management

Activity to the Performing Arts Center Activity in PAP 11; reallocate \$15,693 in unspent funds from the Lower Manhattan Ferry Service Activity in PAP 10 to the Performing Arts Center Activity in PAP 11; increase the total allocation for the Performing Arts Center in PAP 11 by \$2,450,000 from \$49,000,000 to \$51,450,000; transfer the remaining balance of the West Street Activities in PAP 4 to the Final Action Plan; 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 the Corporation is hereby authorized to designate the World Trade Center Performing Arts Center Inc. (PAC, Inc.) as the entity to hold a real property interest in the PAC Site, to be in the form of a 99-year ground lease between PAC, Inc. and the Port Authority of New York and New Jersey (PANYNJ) with an option for PAC, Inc. to acquire fee title upon completion of construction for nominal consideration (PAC Lease), as contemplated in the World Trade Center Memorial and Cultural Program General Project Plan (GPP), as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend its subrecipient agreement with PAC, Inc. by adding \$48,000,000 in funds to pay for a new activity in the subrecipient agreement which will consist of PAC, Inc. paying PANYNJ \$48,000,000 in LMDC funds upon closing on the PAC Lease in consideration for easements and other rights covering access and use of certain infrastructure, foundations and other subgrade elements of the PAC Site, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED that the \$48,000,000 in expenditures approved hereby shall be allocated from funds included in the Performing Arts Center Activity in PAP 11; 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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Mr. Emil then presented the Battery PlayScape item explaining that this is one of the projects funded with the 130 Liberty Street litigation settlement funds. He described the request for \$6 million for construction which will be provided only after all environmental requirements have been met. He added that some of this money may be also be spent on the environmental work.

Director Glen asked if this funding is sufficient for the Parks Department to complete this project and Director Rodrigues replied that it has been up to this point.

Hearing no further question or comments and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Enter into a Subrecipient Agreement with the City of New York  
Department of Parks and Recreation for the Battery PlayScape Settlement Funds  
Program

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RESOLVED, that upon completion of all environmental review, and following HUD's approval of LMDC's request for release of funds and certification for the Battery PlayScape Project, the Corporation is hereby authorized to enter into a subrecipient agreement from the slate of the 14 Settlement Funds projects approved by the Board on March 18, 2016 in an amount not to exceed \$6,000,000 City of New York Department of Parks and Recreation for the Battery PlayScape Program, 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 Settlement Funds activity in Partial Action Plan S-2; 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.

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Mr. Emil then presented the Pier 42 item explaining that this is a request to transfer Pier 42 project funds from one City agency to another.

Acting Chair Patel asked if there were any questions or comments related to this item.

Hearing none, upon motion duly made and seconded, the following resolution was

unanimously adopted:

Authorization to Amend the Subrecipient Agreement with the City of New York Department  
of Small Business Services for the Pier 42 Project

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RESOLVED, that the Corporation is hereby authorized to amend the subrecipient agreement with the City of New York Department of Small Business Services for the Pier 42 Project, by increasing the contract value by \$655,000 as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures hereby approved shall be allocated from funds included in Partial Action Plan S-2 that were previously committed to the City of New York Department of Parks and Recreation for the same Pier 42 Project; 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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Mr. Emil then asked the Directors to approve a no-cost subrecipient agreement time extension for the Empire State Development Job Creation and Retention Program. He explained that the application period had ended but grant payments will need to be made for up to four more years through 2022.

Acting Chair Patel asked for questions or comments from the Directors or the public.

Hearing none, upon motion duly made and seconded, the following resolution was

unanimously adopted:

Authorization to Extend the Subrecipient Agreement with Empire State Development for Job Creation and Retention Program

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RESOLVED, that the Corporation is hereby authorized to amend its subrecipient agreement with Empire State Development to extend the date of grant payment processing for the Job Creation and Retention Program to December 31, 2022, 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 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. Emil then asked the Directors to approve the 2018/2019 Operating Budget as well as the estimated actual spending plan for the upcoming Fiscal Year ending in March 2019. He outlined the various aspects of the reduced budget and noted, in part, that staff reductions, staff sharing and a reduced office space have provided savings. He explained that both Ms. Rogers and Mr. Konopko, LMDC's Internal Auditor, work on both LMDC and Empire State Development projects. LMDC pays only for the time spent on LMDC activities, making them both essentially part-time LMDC employees. Following the full presentation, the Chair then called for any questions or comments from the Directors or the public. Hearing none, upon motion duly made and seconded, the following resolution was unanimously adopted:

Approval of Lower Manhattan Development Corporation Budget for Fiscal Year  
2018/19

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RESOLVED, that the budget of the Corporation for fiscal year 2018-2019 is hereby adopted as presented to this meeting; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are authorized and directed to implement and carry out said budget for the Corporation and are directed to inform the Board of material variances from the budget; 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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Mr. Emil then presented the office space funding request. Following a brief discussion on the item, the Acting Chair called for any questions or comments from the Directors or the public. Hearing none, upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend and Extend Office Space Agreement

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RESOLVED, that the Corporation is hereby authorized to amend and extend the agreement with A&N Design Studio, Inc. d/b/a "Door3 Business Applications" (Door3) for use of a portion of its office space located at 22 Cortlandt Street, 11<sup>th</sup> Floor, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that such amended agreement shall be for a one-year period commencing April 1, 2018 for an amount not to exceed \$155,000 in the aggregate, 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) 2019 Administration 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.

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Mr. Emil then asked if the last two no cost extensions could be consolidated in their voting, which are existing legal and advertising contracts, noting that the Corporation has funds in place for payment of the contracts. Hearing no objection and upon motions duly made and seconded, the following resolutions were unanimously adopted:

#### Authorization to Amend the Pre-Qualified Legal Counsel Services Contracts

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RESOLVED, that the Corporation is hereby authorized to extend its contracts for legal services with Carter Ledyard & Milburn, LLP and Venable LLP for two years through March 31, 2020, 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 2019 and anticipated FYE 2020 Budgets for Planning and Administration, or relevant Partial Action Plans; 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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#### Authorization of Advertising Services Contract Extension

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RESOLVED, that the Corporation is hereby authorized to extend its contract for advertising placement services with Miller Advertising for two years through March 31, 2020, 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 2019 and anticipated FYE 2020 Budgets for Planning and Administration or relevant Partial 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 for a motion to conduct an Executive Session pursuant to paragraph (d) of Subdivision 1 of Section 105 of the New York State Open Meeting Law to discuss pending litigation between Bovis Lend Lease and LMDC. Upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Conduct an Executive Session Pursuant to Paragraph (d) 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 pursuant to paragraph (d) of Subdivision 1 of Section 105 of the New York State Open Meetings Law.

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At 10:05 a.m., the Executive Session adjourned and the meeting was reconvened. It was noted for the record that no votes were taken during Executive Session. The Chair then called for a motion to adjourn the meeting.

There being no further business, the meeting was adjourned at 10:06 a.m.

Respectfully submitted,

Debbie Royce  
Acting Secretary