

LOWER MANHATTAN DEVELOPMENT CORPORATION

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

July 26, 2018

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

Holly Leicht, Chair
Alicia Glen
Thomas S. Johnson
Catherine McVay-Hughes
Mehul Patel
Carl Rodrigues
Carl Weisbrod
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

Also Present:

The Public

The meeting of the Lower Manhattan Development Corporation (“LMDC”) was called to order at 9:09 a.m. Before beginning with the substantive portion of the meeting, David Emil, President of the Corporation, introduced and welcomed the Corporation’s newly appointed Chair, Holly Leicht, to the meeting.

Chair Leicht acknowledged excitement about returning to LMDC where she previously worked and stated she looked forward to working with the Board. She then went on to express the Board's condolences to Director Tom Johnson regarding recent newspaper articles and media coverage concerning his family.

The Chair then 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 and noted for the record the Corporation's policy which welcomes public comments on the items on the current Agenda. She 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 Chair then noted that Agenda would be taken slightly out of order from what was posted online and 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, more specifically between Bovis Lend Lease and the Corporation. 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

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 9:36 a.m. the Executive Session adjourned, and the public meeting was reconvened. The Chair noted for the record that no actions or votes were taken during the Executive Session.

The Chair then called on Mr. Emil to present the next Agenda item for consideration, a request to designate the World Trade Center Performing Arts Center, Inc., as the project to receive a \$400,000 charitable contribution from Lendlease Construction.

Mr. Emil then presented the Lendlease charitable contribution item explaining that LMDC staff is making a recommendation to the Board as to where the \$400,000 charitable contribution will be directed. He noted that the restriction on the recommendation is that the contribution must go to an active LMDC project being conducted by a charitable organization that is a non-governmental 501C3 organization.

The Chair further noted that Lendlease expressed an interest that the donation be provided to a charitable organization on the World Trade Center site.

Mr. Emil clarified that it was Lendlease's recommendation but noted that it was up to the LMDC Board's discretion as to where the charitable donation would go with the only caveat being that it go to a not-for-profit active LMDC project.

Director Weisbrod inquired as to whether the donation could go to a government or public entity. Mr. Emil advised that it could only go to a not-for-profit charitable organization.

Director Johnson mentioned that there should be further discussion and Director Glen agreed and wondered whether the PAC needed the money or was the best recipient, whether perhaps another organization was in more immediate need. She stated she would like to be given a chance to review all other eligible projects to see which project would benefit the most from the use of the funds. Director Glen commented she would prefer to vote on the item at the next Board meeting after having reviewed all eligible projects.

Director Weisbrod also requested information regarding uncommitted LMDC funds and the not-for-profits to be reviewed prior to the next LMDC Board meeting. He asked if the funds had to be spent in one place. Mr. Emil responded that the answer was no, but there were not that many open active projects eligible and would supply a list to the Board members prior to the next meeting.

Director Weisbrod also requested whether the PAC could present a comprehensive presentation at the next Board meeting. Director Glen agreed commenting that it would be good to follow up with the PAC to get an update as to the status of where it is with regards to previous Board authorizations.

Mr. Emil then offered a quick summary outlining how the funds have been spent to date. He also noted this would be a good time for the PAC to give a presentation since HUD would also like to know what is going to happen with the remaining money.

The Chair stated that a presentation at the next meeting makes sense. Director Weisbrod mentioned he had been to a previous presentation by the PAC which he found impressive and helpful.

Director McVay-Hughes reiterated that over the years LMDC has requested value engineering from the PAC and just wanted some of the newer members of the Board to be aware of that.

Director Johnson mentioned that along with the review of the not-for-profits, that it be followed with the budget and given to the Audit & Finance committee prior to the Board.

The Chair agreed and made a motion to table the discussion until the next Board meeting before which time the Board will be provided a list of all eligible not-for-profits. Hearing no objections the item was then tabled upon the following resolution:

Request to Designate the World Trade Center Performing Arts to Receive \$400,000
Charitable Contribution

RESOLVED, to table this discussion until the next Board meeting at which time the Board will be provided additional information of a list of not-for-profits given to the Board members and the Audit & Finance committee prior to the next Board meeting.

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The Chair then requested an acknowledgement of the contributions and accomplishments of former LMDC Board Chair Joseph Chan.

Director McVay-Hughes made an additional comment that Mr. Chan also worked on open spaces and public parks and requested that be added to the resolution. Mr. Emil stated that the resolution would be amended to include Director McVay-Hughes comments.

The Chair made a motion for approval of Mr. Chan's amended resolution which was made and seconded, and the following resolution was unanimously adopted:

Approval of Contributions and Accomplishments of Joseph Chan

WHEREAS, that the Acknowledgment of the Contributions and Accomplishments of Former Lower Manhattan Development Corporation Board Chair Joseph Chan and Commendation for His Service to Lower Manhattan 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.

WHEREAS Joseph Chan has served as Chair of the Lower Manhattan Development Corporation from May 2015 through May 23, 2018; and

WHEREAS Chairman Chan's leadership over the last three years assisted in the continued recovery of Lower Manhattan, and preserved for the citizens of New York the vision of a rebuilt, vibrant business, residential and commercial community; and

WHEREAS Chairman Chan has preserved the fiscal integrity of the Lower Manhattan Development Corporation and has led the effort to reallocate recovered funds to further assist in the redevelopment of Lower Manhattan; and

WHEREAS Chairman Chan's support of community and cultural revitalization, has resulted in the allocation and preservation of funds for the Performing Arts Center;

WHEREAS Chairman Chan's commitment to the LMDC mission led to further improvements and the allocation of additional funding for lower Manhattan public parks and open spaces.

WHEREAS, that the Board of Directors of the Lower Manhattan Development Corporation commends Chairman Chan on his exemplary service, integrity, and dedication to the agency and the people of Lower Manhattan.

* * *

The Chair then called for a motion to approve the Minutes of the Directors' meeting of March 8, 2018. 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 8, 2018, 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 presented the ratification of 130 Liberty litigation counsel agreement extension with Winston & Strawn LLP noting that the firm was used in the 130 Liberty litigation

and was requesting a zero-dollar time extension only. Mr. Emil commented that Winston's work on the settlement was far less expensive than the cost to litigate would have been.

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

Ratification of 130 Liberty Litigation Counsel Agreement

RESOLVED, that the Corporation is hereby authorized to extend its contract for 130 Liberty Street litigation services with Winston & Strawn LLP, for a six-month period through September 30, 2018, 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 Budget 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 on Mr. Emil to provide his President's report.

Mr. Emil reported on the status of the West Thames Street Bridge project. He outlined how LMDC staff has been meeting with NYC EDC staff and explained how the bridge would

most likely not be installed by the spring of next year. He advised that Skanska, the global construction management firm selected to build the structure, had recently replaced the fabrication company it had subcontracted to assemble the 230-foot-long span and neither Skanska nor NYC EDC are currently prepared to state what the time or cost impact of this delay will be.

Director Rodrigues mentioned that a weld defect had been discovered that could compromise the expected lifespan of the structure. Director McVay-Hughes asked what the lifespan of the bridge was supposed to be. Mr. Emil said the bridge was designed to last 75 years.

Director Johnson inquired as to who was accountable regarding the project, and Mr. Emil informed him that City EDC was the project manager. Director Johnson expressed frustration with the delay as this is something the neighborhood needs and wants.

Director Glen speaking on behalf of the City, stated it would make sure that all possible resources are provided to the project to make sure that it can move expeditiously.

A brief discussion on the delayed bridge project ensued ending with the Chair stating that another update is expected at the next meeting. The Chair then moved on to the next

Agenda item, the Audit and Finance Committee Report.

Prior to presenting the report Director Johnson, Chair of the Audit and Finance Committee (the "Committee"), noted that in the future it would be beneficial if the Audit and Finance Committee report were presented prior to the action items, and the Chair agreed.

Director Johnson reported that the Committee met on June 27th and reviewed additional material on July 18th that was presented to the Board for consideration today. He noted the Committee supports the ratification of 130 Liberty Litigation Counsel Agreement with Winston & Strawn, the authorization to amend the subrecipient agreement with the City of New York Department of Small Business Services for the East River Waterfront Pier 42 project, and the proposal to increase the contract value for Carter Ledyard. He advised the Committee thoroughly reviewed and discussed the request on today's Agenda. The Committee was updated on the 130 Liberty settlement agreement activity that we discussed, and supports the actions proposed by the staff at this meeting but that has been modified by the Board.

Director Johnson noted the twenty-second "HUD Office of Inspector General Audit Report" was issued in May and there were no findings or recommendations noted; LMDC's annual independent audit was completed and distributed; no findings were reported. He also noted that the Board should be proud of the way the financial management of LMDC has been conducted.

Lastly, Director Johnson noted the Committee met with the Corporation's Internal Auditor and is pleased to report no irregularities or findings were identified.

The Chair then moved on to the Projects and Programs of the Agenda to request to amend the City of New York Department of Small Business Services Subrecipient Agreement for the Pier 42 Project.

Mr. Emil presented a brief background outlining the ongoing demolition of an existing shed structure and construction of a park on Pier 42, noting funds were previously allocated for the Project, but not all funds were incorporated into the contract. He explained that this authorization would increase the funds in the agreement by \$19.4 million, the remainder of the Pier 42 allocation.

Mr. Ciniello noted that Pier 42 was at the point now where \$19 million was to be put into the contract when the design for the Project was approved. He stated the City is close to the point now where they need the money for both the cost of construction and to complete the demo work. He further noted there would be no need to come back to the Board since the money requested and already in the contract which includes \$7 million for design, demo, the abatement and design for the park will be the full allocation. Mr. Ciniello added that the Board was being asked for more construction money; after the design approval the \$19.4 will be made available and added to the contract at that time.

Ms. Rogers confirmed that LMDC would be approving the design when the time came.

Director Glen asked whether there was a final price on the project, and Mr. Emil stated that there was no final price until LMDC reviews the City's final budget of the project.

Director McVay-Hughes inquired as to the status of the City's resiliency plans regarding Superstorm Sandy and whether the plans were compliant with federal guidelines.

Director Rodrigues noted that the City's resiliency plans were tied into various downtown projects which were each being looked at individually and was not aware of any federal guidelines needing to be implemented.

Ms. Rogers noted that the Pier 42 environmental assessment was available on-line with a fair amount of design work done regarding resiliency because of the requirements of the flood plain.

Mr. Ciniello noted the City was coordinating with the various agencies surrounding Pier 42.

Mr. Emil commented that he wanted to make the Board aware that the Pier 42 Project could cost more than \$19 million and now is the time LMDC will be able to figure that out as to what additional needs there may be in completing the Project. He noted if that should happen,

then the item will be brought before the Board once again outlining additional funding needs.

Mr. Ciniello began to explain the full project allocation and that the funds in the contract were for the shed abatement and demolition as well as design work for the uplands parks. He added that additional funds were needed for the demo phase and funding will be needed for the hiring of contractors for some early construction on the park noting that construction money would be added only after design approval and verification that all environmental and other checks and balances were met.

Ms. Rogers explained that there was no reason to believe they were not met; she reviewed the environmental records and the records are fine and that is why the item is coming before the Board today.

Director Glen asked if these funds were for both the demolition of the existing structure and to begin work on the upland. The Chair asked for clarification.

Mr. Ciniello explained that the Corporation currently has a contract for approximately \$7 million to cover full project design, abatement and demolition of the shed. NYC EDC is working on bids for the upland portion which is designed but cannot move forward without a resolution from this Board to make money available. He noted that over the next few months, the Corporation plans to put this money into the contract so NYC EDC can draw on it but that the Corporation only pays when the bids are approved, the project is underway and the work is

completed.

The Chair stated that the Directors are being asked to move the \$19 million into the contract and are authorizing staff to make the determination that the condition precedent has been met.

Director McVay-Hughes then asked if resiliency efforts are being coordinated and about the condition of the pylons which always tend to be a big cost. She added will the project be compliant with the new levels of resiliency.

Director Rodrigues responded yes and explained that the City is moving forward with re-assessing the coordination of efforts among the project and ESCR and LMCR projects. He added that all projects are individually being designed thoughtful to resiliency but they also tie into each other.

Ms. Rogers added that the Pier 42 environmental assessment considered mitigation efforts and that there was a fair amount of design thought put into resiliency because of the location in the flood plain.

The Chair asked if there were any additional questions or comments.

Mr. Emil added a final clarifying comment that he apologizes for the confusion, and the

point he wanted to make is that it is theoretically possible that this Project could cost more than what is presently being allocated and if it does, the item will come back to the Board.

Director Weisbrod added that it was also possible that the City could put in money.

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

Authorization to Amend the Subrecipient Agreement with the City of New York to Provide Additional Funds for Pier 42

RESOLVED, the Corporation is hereby authorized to amend its subrecipient agreement with The City of New York through its Department of Small Business Services (SBS), to increase funding by \$19,400,000 to an amount not to exceed \$26,655,000, for the Pier 42 Project 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 Partial Action Plans 10 and 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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The Chair then moved to the last item, to Request to Amend the Pre-Qualified Legal Counsel Contract with Carter Ledyard & Milburn, LLP.

Ms. Rogers noted that the requested amendment will increase the contract value needed to represent LMDC on real property street related sites, with a contract value not to

exceed \$1.5 million. She noted LMDC will have to remove the real property signage at the request of the City of New York and the Port Authority of New York and New Jersey. The Port Authority will pay the cost with no LMDC funds to be spent at all.

Director Weisbrod inquired as to where LMDC is in relation to Site 5 and the Chair advised that negotiations were still ongoing with nothing new to report although there may be a status update at the next Board meeting. Ms. Rogers noted that the request before the Board has nothing to do with a transfer of title with regards to the site. Director Weisbrod then noted that the outstanding issues were Site 5, the PAC, and any financial exposures and opportunities regarding current projects.

Director Rodrigues then asked to have a list of any leftover money be presented at the next Board meeting along with a resolution regarding Site 5 with a potential of a lot of money.

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

Authorization to Amend Legal Services Contract with Carter Ledyard & Milburn LLP

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Carter Ledyard & Milburn LLP for legal services in the areas of real estate and land use, environmental and condemnation law, and any related litigation to increase the authorized expenditures thereunder by up to \$350,000, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be paid by the Port Authority of New York and New Jersey pursuant to an Indemnity and Cost Sharing Agreement dated November 1, 2006; 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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There being no further business, the meeting was adjourned at 10:21 a.m.

Respectfully submitted,

Debbie Royce
Acting Secretary