

DRAFT - SUBJECT TO REVIEW AND REVISION

LOWER MANHATTAN DEVELOPMENT CORPORATION

Meeting of the Directors
Held at the Offices of the Corporation
One Liberty Plaza - 20th Floor
New York, New York 10006

February 25, 2010

MINUTES

In Attendance

Directors:

Avi Schick, Chairman
Lawrence T. Babbio, Jr.
Amanda Burden (via telephone)
Robert Douglass
Robert Harding
Caswell Holloway
Kate Levin
Julie Menin
Kevin Rampe
William Rudin (via telephone)
Carl Weisbrod (via telephone)

Staff Attending:

For Lower Manhattan Development Corporation:

David Emil, President
Irene Chang-Cimino, General Counsel and
Corporate Secretary
Daniel Ciniello, Senior Vice President
Errol Cockfield, Vice President -
Communications & Community Affairs
Stephen Konopko, Vice President -
Internal Audit
Sayar Lonial, Director of Planning and
Development
Robert Miller, Chief Financial Officer
Phil Plotch, Director of WTC Redevelopment &
Special Projects
Angela Rossi, Director of Projects and
Programs
Andrew Wu, Deputy General Counsel
Other Staff

For the Lower Manhattan Construction Command Center:

Robert Harvey, Acting Executive Director

For Empire State Development Corporation:

Peter Davidson, Executive Director

Counsel to the Board:

Richard Davis, Esq., Weil, Gotshal & Manges

The meeting of the Lower Manhattan Development Corporation ("LMDC") was called to order at 8:39 a.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.

First, Chairman Schick noted that, as has become the practice, since the Directors had received the resolutions for consideration in advance of today's meeting, he would not read the entire resolution into the record.

Chairman Schick then called for the approval of the Minutes of the December 17, 2009 Directors' Meeting.

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 December 17, 2009, as presented to this meeting, are hereby approved and all actions taken by the Directors presented at such meeting, as set forth in such minutes, are ratified and approved as actions of the Corporation.

* * *

Chairman Schick then opened the Chairman's Report by reporting on the most recent activities at 130 Liberty Street, noting that the work was proceeding at pace.

The Chairman then explained that there has been discussion in the past regarding certain cultural and community development money that has not been allocated or spent. With regard to that money, Chairman Schick continued, a process whereby those funds can be made available has been considered.

LMDC, he further noted, has been holding back in that regard until the Corporation had a final and firmer grasp on the economics and finances at 130 Liberty Street. The Chairman explained that one of the items to be considered at today's meetings is the approval of a proposed settlement with two of

the prior insurers of the building. This settlement, he noted, will provide LMDC with some certainty in terms of funding through the end of the job.

The Chairman continued that in light of that and in consultation with the Deputy Mayor's office, it has been determined that a sub group of the Board will work with LMDC staff and management to develop some form of outlines or guidelines for what will be the third round of grants.

The Chairman then went on to note that LMDC was recently served with a lawsuit by Bovis seeking substantial funds from LMDC for a variety of reasons. Said lawsuit, he continued, will be vigorously defended.

The Chairman then asked Director Babbio to provide the Audit and Finance Report.

Director Babbio noted that the Committee reviewed the budget variance reports for LMDC and LMCCC for the third quarter of the fiscal year which ended December 30, 2009. He stated that those reports indicated that expenditures have been well controlled and were below budgeted levels.

Director Babbio further noted that the Committee met to review the purpose, cost justification and the availability of funds for the four funding authorizations being presented for consideration today and that the Committee recommends that the items be considered for approval by the Board.

Finally, Director Babbio noted that the Committee has also reviewed the proposed settlement agreement with the prior insurers. Among other things, Director Babbio noted that the settlement agreement does allow LMDC to move forward on the deconstruction and clearing and therefore, the Audit Committee supports the recommendation for approval.

The Chairman then noted that approximately a year ago, a decision was made to consolidate the space on the 29th floor where LMCCC was operating. This, he noted, resulted in a 50% savings. The Chairman further explained that LMDC's lease for the office space now shared between LMDC and LMCCC is about to expire. He then called on Mr. Emil to present an item relating to the extension of the lease.

Mr. Emil then asked the Directors to authorize LMDC and LMCCC to enter into an office lease amendment at One Liberty Plaza. Mr. Emil noted among other things, that LMDC is seeking

authorization to extend the lease for two years. The actual term, he explained, may be shorter.

Following the full presentation, the Chairman called for questions or comments. Director Menin then asked what the overall plan was for the sun setting of LMDC.

Mr. Emil stated that the short answer is that LMDC cannot and should not go on forever. He continued that the Corporation, however, does have responsibilities for ensuring that the federal funds that it is overseeing are properly spent and monitored through the conclusion of the work.

That, he stated, will take more than the year or 18 months contemplated for the lease extension, however, it is most prudent at this time to view this from a budget perspective rather than attempt to address the overall picture.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Enter Into Office Lease Amendment

RESOLVED, that the Corporation is hereby authorized to enter into a lease amendment with BFP 1 Liberty Plaza Co. Inc., as landlord, for the Corporation's and LMCCC's combined office space at the 20th Floor of 1 Liberty Plaza, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that such lease amendment shall be for a two-year period commencing after the expiration of the Corporation's current office lease in February 2010, for an amount not to exceed \$1,480,000 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 future annual operating budgets utilizing federal Department of Housing and Urban Development ("HUD") Planning and Administrative Funds as well as Lower Manhattan Construction Command Center's ("LMCCC's") State Funds from The Port Authority of New York and New Jersey, the Metropolitan Transportation Authority and the New York State Department of Transportation; 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.

* * *

Mr. Emil then asked the Directors to authorize LMDC to amend its contract with URS for construction management and owner's representation services at 130 Liberty Street.

Following the full presentation, the Chairman called for questions or comments. Director Holloway asked if there will be

a gradual fall off in staffing needs as URS services are ramping down.

Mr. Emil stated and Mr. Harvey concurred that URS services will likely stay about the same until the building gets quite low down because, among other reasons, there is a lot of engineering support associated with current deconstruction technology.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Contract with URS Corporation

RESOLVED, that the Corporation is hereby authorized to amend its agreement with URS Corporation for construction management and owner's representation services at 130 Liberty Street to increase the authorized expenditures thereunder by up to \$3,441,324, to an amount not to exceed \$22,207,461 in the aggregate, and to extend the term of such agreement through March 31, 2011, 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 7 and S-2 and that the Corporation shall seek recovery of these funds through indemnity or insurance claims to the extent possible; 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.

* * *

Next, Mr. Emil asked the Directors to authorize LMDC to amend its contract with TRC Engineers, Inc. for environmental testing and consulting services at 130 Liberty Street.

Mr. Emil explained that even though the abatement is completed, LMDC is required to continue to monitor the area for various contaminants in order to protect the community from any possible risks.

Following the full presentation, the Chairman then called for question or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Contract with TRC Engineers, Inc.

RESOLVED, that the Corporation is hereby authorized to amend its agreement with TRC Engineers, Inc. for environmental testing and consulting services at 130 Liberty Street, to increase the authorized expenditure thereunder by up to \$2,100,000, to an amount not to exceed \$33,844,675 in the aggregate, and to extend the term of such agreement through March 31, 2011, 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 7

and S-2 and that the Corporation shall seek recovery of these funds through indemnity or insurance claims to the extent possible; 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.

* * *

The Chairman then asked the Directors to authorize LMDC to amend its contract with Dechert LLP for legal advice and services relating to 130 Liberty Street to extend the term of such agreement for a one-year period through March 31, 2011.

Following this presentation, the Chairman called for questions or comments on any of the foregoing request. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Contract with Dechert LLP

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Dechert LLP for legal advice and services relating to 130 Liberty Street to extend the term of such agreement for a one-year period through March 31, 2011, 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.

* * *

Next, the Chairman presented a request for authorization for LMDC to enter into a Settlement Agreement with Allianz and AXA.

The Chairman outlined the background information and the various negotiations that went into the proposed settlement.

The Chairman then introduced Richard Davis from the firm of Weil, Gotshal and Manges to speak about the settlement.

Mr. Davis noted that it had been a number of years since he served as counsel to LMDC with regard to the settlement negotiations. He then noted that his firm has reviewed all of the issues and strongly recommends the settlement as a fair resolution of the pluses and minuses involved in any litigation.

Director Holloway asked if the agreement is approved will the prior insurers' involvement in and scrutiny of the day-to-day business of the Corporation end.

Mr. Davis stated that the prior insurers had certain rights under previous agreements and once the settlement is approved, those rights will end and LMDC can continue to manage the

Project as it believes is in the best interest of the Corporation, the City and the State.

Director Harding then asked what the impact of the settlement will be on LMDC's budget.

Chairman Schick informed him that it will have no impact on the operating budget.

The Chairman went on to explain that in terms of the program budget, without the settlement, LMDC would have to figure out sources of additional money to pay for the last phase of the deconstruction.

A brief discussion was had and the Chairman explained in part that the unspent funds are available because the Audit and Finance Committee has been hawkish in not considering additional programmatic expenditures while there was uncertainty with respect to the funding stream for the completion of 130 Liberty. With the settlement, it was explained, these funds can now be utilized for the purposes that they were intended.

Director Weisbrod then commended all those involved for a job well done.

There being no further questions or comments, the Chairman called for a motion to approve and upon motion duly made and seconded the following resolution was unanimously approved:

Authorization to Enter into Settlement Agreement with Allianz and AXA

RESOLVED, that the Corporation is authorized to enter into a settlement agreement with Allianz Global Risks US Insurance Company ("Allianz") and AXA Corporate Solutions Insurance Company ("AXA") to settle the dispute with Allianz and AXA relating to the allocation among the Corporation and Allianz and AXA of costs arising from the abatement and deconstruction activities at the building located at 130 Liberty Street, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized, in the name and on behalf of the Corporation, to execute and deliver any and all documents and to take all related actions as he or she may consider to be necessary or appropriate to effectuate the foregoing resolution.

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There being no further business, the meeting was adjourned at 9:16 a.m.

Respectfully submitted,

Eileen McEvoy
Assistant Secretary