

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

January 26, 2011

MINUTES

In Attendance

Directors:

Avi Schick, Chairman
Lawrence Babbio (via telephone)
Peter Davidson (via telephone)
Robert Douglass (via telephone)
Timothy Gilchrist
Robert Harding (via telephone)
Caswell Holloway (via telephone)
Thomas Johnson (via telephone)
Kate Levin (via telephone)
Julie Menin
Kevin Rampe (via telephone)
Robert Steel

Staff Attending:

For Lower Manhattan Development Corporation:

Irene Chang-Cimino, General Counsel and
Corporate Secretary
Daniel Ciniello, Senior Vice President
Stephen Konopko, Vice President - Internal
Audit
Robert Miller, Chief Financial Officer
Andrew Wu, Deputy General Counsel
Other Staff

For the Lower Manhattan Construction Command Center:

Robert Harvey, Acting Executive Director

Counsel to the Board:

Richard J. Davis, Esq., Weil, Gotshal & Manges

For Speaker Silver:

Judy Rapfogel

Also Present:

The Public

The Media and Press

The meeting of the Lower Manhattan Development Corporation ("LMDC") was called to order at 8:34 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.

Chairman Schick opened the meeting by reporting that the demolition work at 130 Liberty Street is very near completion and that this is a very good moment for the downtown community which wanted to see that building gone for a long time.

The Chairman went on to provide a financial update with regard to the cost of the abatement of deconstruction of the project. Chairman Schick provided a detailed Powerpoint presentation of each of the various components of those costs as well as of LMDC's claims for recovery and recoupment of monies

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that the Corporation has paid.

Overall, Chairman Schick explained that \$263.6 million is the aggregate amount billed to LMDC for these costs. Of that amount, LMDC has paid \$157.5 million for the abatement and deconstruction. He further noted that private sector entities have paid \$155.1 million which includes funds thus far recouped by LMDC from various entities including Deutsche Bank.

Chairman Schick went on to explain that further funds will be sought through a legal claim to be filed shortly by LMDC against Bovis.

Chairman Schick then 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 November 22, 2010 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 November 22, 2010, 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.

* * *

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

Director Johnson noted that the Committee met to review the Partial Action Plan amendments to the settlement agreement and the funding authorizations that are being presented for consideration today. He outlined the method of consideration utilized and noted that the Committee recommends that the items be considered for approval by the Board.

Director Johnson further noted that the Committee reviewed the budget variance report for LMDC and the Lower Manhattan Construction Command Center for the third quarter of LMDC's fiscal year and found expenditures to be well within the budgeted levels.

The Chairman then provided a detailed synopsis of the

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relevant background information with regard to a request to the Directors to authorize LMDC to amend Partial Action Plan 11 and the Final Action Plan to reduce the \$10,000,000 funding allocation to The Drawing Center by \$6,745,440 and to reallocate \$5,850,440 to the Community and Cultural Enhancement Fund and \$895,000 to funds reserved for the September 11th commemoration ceremonies.

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

Authorization to Amend Partial Action Plan 11 and Final Action Plan

RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plan 11 and the Final Action Plan (the "Amended Action Plans") to reduce the \$10,000,000 funding allocation to The Drawing Center by \$6,745,440, and, of such funds, to reallocate \$5,850,440 to Community and Cultural Enhancements, and \$895,000 to Cultural and Community Events and Installations, 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 is hereby 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, provided any

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changes so made shall be consistent with the criteria set forth in such Amended Actions 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.

* * *

The Chairman then asked Ms. Chang-Cimino to present the item relating to LMDC's settlement with Deutsche Bank.

Ms. Chang-Cimino began by noting that shortly after LMDC purchased the building at 130 Liberty Street LMDC learned that there were certain hazardous materials, including asbestos-containing building materials, used in the building prior to September 11, 2001. Ms. Chang-Cimino noted that since that time, LMDC and Deutsche Bank have been in negotiations regarding Deutsche Bank's liability for the costs associated with the handling and removal of the subject material. Ms. Chang-Cimino stated that an agreement was recently reached in late December. Ms. Chang-Cimino explained that the essential terms of the settlement are quite straightforward in that Deutsche Bank will pay LMDC \$3.8 million and the parties will provide mutual releases from all claims.

Ms. Chang-Cimino then asked the Directors to authorize LMDC to enter into a Settlement Agreement with Deutsche Bank Trust

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Company Americas.

Following the full presentation, the Chairman commented briefly that while the agreement is straightforward, it is the result of a very substantial effort on the part of Ms. Chang-Cimino and her staff and Mr. Davis of Weil Gotshal, LMDC's outside counsel, to fulfill the Corporation's fiduciary obligations to taxpayers to recoup monies owed by others.

The Chairman then called for questions or comments. Director Holloway asked for clarification with regard to what the settlement figure will cover and he was informed that the sum relates to costs associated with the handling and removal of pre-existing hazardous materials and not the 9/11 asbestos.

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

Authorization to Enter into Settlement Agreement with
Deutsche Bank

RESOLVED, that the Corporation is hereby authorized to enter into an agreement with Deutsche Bank Trust Company Americas ("Deutsche Bank") for Deutsche Bank to provide \$3.8 million to the Corporation to settle a dispute relating to costs associated with the handling and removal of certain hazardous material located in the building at 130 Liberty Street, as

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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.

* * *

Mr. Miller then asked the Directors to authorize LMDC to amend its agreement with Toski, Schaefer & Co., PC for independent auditing services to increase the authorized expenditures thereunder by up to \$70,000 to an amount not to exceed \$265,000 in the aggregate. Mr. Miller further noted that the amendment will extend the term of such agreement for up to a one year period through December 31, 2011. Following the full presentation, the Chairman called for questions and comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Agreement for Independent Auditing Services

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Toski, Schaefer & Co., P.C. for independent auditing services to increase the authorized expenditures thereunder by up to \$70,000 to an amount not to exceed \$265,000 in the aggregate, and to extend the term of such agreement for up to a one-year period through December 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 the Finance Department

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Budget for fiscal year ending 2012; 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.

* * *

There being no further business, the meeting was adjourned
at 9:03 a.m.

Respectfully submitted,

Eileen McEvoy
Assistant Secretary