

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

April 5, 2012

MINUTES

In Attendance

Directors:

Avi Schick, Chairman
Lawrence T. Babbio, Jr.
Amanda Burden (via telephone)
Robert Douglass (via telephone)
Timothy Gilchrist
Robert Harding
Kate D. Levin
Julie Menin
William Rudin (via telephone)
Robert K. Steel

Staff Attending:

For Lower Manhattan Development Corporation:

David Emil, President
Robert Miller, Chief Financial Officer
Stephen Konopko, Internal Auditor
Angela Rossi, Project Manager

For Sheldon Silver:

Judy Rapfogel

Also Present:

The Media
The Press

DRAFT – SUBJECT TO REVIEW AND REVISION

The meeting of the Lower Manhattan Development Corporation (“LMDC”) was called to order at 8:45 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 asked the Directors to ratify and approve the Minutes of the January 26, 2012 Directors meeting.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

Approval of January 26, 2012 Meeting Minutes

RESOLVED, that the minutes of the meeting of the Corporation held on January 26, 2012, 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.

* * *

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

Director Babbio first noted that the Committee met to review the funding authorizations that are being presented for consideration today and that the Committee

DRAFT – SUBJECT TO REVIEW AND REVISION

recommends that the items be considered for approval by the Board.

Director Babbio further noted that the Committee also reviewed the proposed operating budgets for LMDC and LMCCC.

In that regard, Director Babbio stated that the Committee recommends the adoption of both budgets as they have been presented to the Board.

Director Babbio further stated with regard to the LMCCC budget that the expenditure of funds expected to be received from the Port Authority, the MTA and the NYS Department of Transportation are only authorized to the extent that the funds from those organizations are actually received. Director Babbio added that in some cases, the funds are in hand, in others, there is a verbal commitment that LMDC will receive these funds in the next month or so.

Lastly, Director Babbio noted that the Committee met with the Internal Auditor and approved the upcoming fiscal year audit plan.

Chairman Schick thanked the Audit Committee for their diligent financial oversight work on behalf of the Corporation.

The Chairman 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

DRAFT – SUBJECT TO REVIEW AND REVISION

discuss matters relating to LMDC Litigation. Upon motion duly made and seconded, the following resolution was unanimously adopted:

EXECUTIVE SESSION - Pursuant to Paragraph (d) of Subdivision 1 of Section 105 of the New York State Open Meeting Law

RESOLVED, that the Directors conduct an Executive Session to consider matters pertaining to Paragraph (d) of Subdivision 1 of Section 105 of the New York State Open Meeting Law.

* * *

The Directors and Members of the senior staff left the room and met privately. The Executive Session ended at 9:27 a.m. It was noted for the record that no votes were taken during the Executive Session.

Chairman Schick then asked Mr. Emil to provide a brief presentation with regard to the adoption of the LMDC and the LMCCC Budgets.

Mr. Emil explained that the LMDC Budget for this year is part of the effort to gradually phase down LMDC's operation and incorporate it to the greatest extent possible into some form of a conclusion program.

Among other things, Mr. Emil explained that LMDC has been working with the Port Authority and as noted in the LMDC budget, the Port Authority has provided two staff members. Over the next year, it is expected that this number will increase. Mr. Emil added that as LMDC completes the projects that remain, LMDC will be conducting most of the

DRAFT – SUBJECT TO REVIEW AND REVISION

oversight and auditing of the project with the Port Authority support.

Mr. Emil then stated that this year's budget is not significantly reduced from last year's because with the release of the \$17 million of new LMDC community grants, staff was needed both to enter into the various sub-recipient agreements and to monitor the new and existing agreements.

With the conclusion of this budget year, Mr. Emil continued, LMDC will have entered into all of the agreements for the \$17 million and will have concluded most of the other former grant projects so that in years two and three of this program, there should be significant decreases in the budget.

Mr. Emil then explained with regard to LMCCC that the budget is significantly reduced from 2012 to 2013 from \$9 million to \$7 million and as has been the case in previous years, the bulk of this is in New City in-kind services.

Mr. Emil further explained that as is the case with LMDC, LMCCC is being supported by the Port Authority and as the Audit and Finance Committee has required, the funds will only be spent as they are made available from the funding agencies.

Following the full presentation, the Chairman called for questions or comments. Director Menin noted that as she has done in the past, she will vote against the LMDC budget.

DRAFT – SUBJECT TO REVIEW AND REVISION

She explained that she has believed for many years the LMDC should be sunseting. Director Menin further stated that she appreciates Mr. Emil’s efforts to begin to phase LMDC out but she believes that the Corporation should have been subsumed into the City, ESD or the Port Authority on a much faster timetable.

Director Menin then stated that she will vote in favor of the LMCCC budget because LMDC is heading into the peak construction year downtown in 2013.

Director Menin then asked for clarification as to the status of those LMCCC employees who received termination notices. Chairman Schick stated that there are a number of positions at LMCCC that are being consolidated with the Port Authority. It is his belief that the Port Authority is seeking to continue to provide the many services needed while at the same time consolidating those positions into the Port Authority.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was adopted (It was noted for the record the Director Menin voted in opposition to the LMDC Budget):

Approval of Lower Manhattan Development Corporation Budget for FY2012-2013

RESOLVED, that the budget of the Corporation for fiscal year 2012-2013 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

DRAFT – SUBJECT TO REVIEW AND REVISION

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.

* * *

Approval of Lower Manhattan Construction Command Center Budget for FY2012-2013

RESOLVED, that the budget for Lower Manhattan Construction Command Center (“LMCCC”) operations for fiscal year 2012-2013 is hereby adopted as presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures in support of LMCCC operations that are supported by funds from state funding entities are contingent on the receipt of funds by Lower Manhattan Development Corporation from the Federal Transit Administration, Port Authority of New York and New Jersey, the Metropolitan Transportation Authority and/or the New York State Department of Transportation sufficient to fund these expenditures and in accordance with any agreements LMDC has with these entities; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are authorized and directed to implement and carry out said budget for LMCCC operations and are directed to inform the Board of material variances from the LMCCC 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.

* * *

Mr. Miller then provided a brief presentation with regard to the request to authorize LMDC to amend its agreement for independent auditing services. Mr. Miller explained, in part, that these are the same auditors who are engaged to conduct the external audit for ESD.

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

DRAFT – SUBJECT TO REVIEW AND REVISION

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. as independent auditor to the Corporation, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that such amendment shall extend the term for four years through December 31, 2015 and increase authorized expenditures by up to \$165,000 to an amount not to exceed \$430,000; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated through the Corporation's anticipated planning and administration budgets for the fiscal years ending March 31, 2013, 2014, 2015, and 2016; 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.

* * *

The Chairman then presented an item relating to a request for authorization for LMDC to enter into 12 Sub-recipient Agreements for the Community and Cultural Enhancement Plan. The Chairman noted that the Directors had previously authorized the grants and this request is for authorization to enter into sub-recipient agreements which will allow the money to flow into the organization and the community. He then provided the name of each organization.

Mr. Emil noted that there are late additions related to this request, the first being the proposed Board approval of a No Environmental Impact Determination and the second being

DRAFT – SUBJECT TO REVIEW AND REVISION

the addition of a sub-recipient agreement with ABC No Rio. Mr. Emil indicated that separate materials for each item were provided to the Directors.

The Chairman stated that the first vote would relate only to the 12 sub-recipient agreements that he had mentioned and then he would call for separate votes on the two items mentioned by Mr. Emil.

Following this 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 Enter into 12 Subrecipient Agreements for the Community and Cultural Enhancement Program

RESOLVED, that the Corporation is hereby authorized to enter into 12 subrecipient agreements from the slate of the 38 Community and Cultural Enhancement Program projects approved by the Board on September 7, 2011 in an amount not to exceed \$3,125,000 in the aggregate with the following parties:

- a. Children’s Museum of the Arts to launch the Teen Arts Center program at their new facility located at 103 Charlton Street, in an amount not to exceed \$250,000;
- b. Clemente Soto Velez Cultural & Educational Center Inc. over two years for design, planning, and project management related to the renovation of their interior space at CSV’s 107 Suffolk Street facility, in an amount not to exceed \$500,000;
- c. Common Ground for security and safety upgrades at The Lee, located at 133 Pitt Street on the Lower East Side, in an amount not to exceed \$250,000;
- d. Educational Alliance, Inc. over three years for the College Access and Success Program launched in July 2010, in an amount not to exceed \$300,000;
- e. Hamilton Madison House for a renovation project to expand the quality and capacity of their outpatient Mental Health clinic located at 253 South Street and improve their records management system, in an amount not to exceed \$250,000;

DRAFT – SUBJECT TO REVIEW AND REVISION

- f. Indochina Sino-American Community Center for the design, construction, and installation of a central heating and air system, and for equipment to enhance the usage of the multimedia lab, in an amount not to exceed \$125,000;
- g. Lower Manhattan Cultural Council (“LMCC”) for the implementation of LMCC’s newly created Marketing for the Arts training program, in an amount not to exceed \$500,000;
- h. New Amsterdam Public Market Association, Inc. d/b/a. as New Amsterdam Market for additional staff that will work to attract new vendors and implement a new wholesale market as well as funding for outreach and marketing to expand the Market’s customer base in an amount not to exceed \$250,000.
- i. NYC Department of Parks and Recreation (The Friends of Washington Market Park) for Washington Market Park maintenance, landscaping, sod installation, and equipment, in an amount not to exceed \$100,000;
- j. Friends of the New York City Fire Department Collection, Inc. for the continuation of a cataloguing and artifact conservation project, in an amount not to exceed \$100,000;
- k. The Paul Taylor Dance Foundation for the upgrade of their 40’x75’ main dance studio into a multi-purpose black box performance space, in an amount not to exceed \$250,000; and
- l. The Wooster Group over two years for the reactivation of the Wooster Group’s home-base, The Performance Garage, on 33 Wooster Street, in an amount not to exceed \$250,000; 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 Community and Cultural Enhancement Program 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.

* * *

Chairman Schick called for a vote on the environmental determination item referred to by Mr. Emil and upon motion duly made and seconded, the following resolution was unanimously adopted:

Approval of Environmental Determinations and Related Actions

WHEREAS LMDC is responsible, pursuant to federal statute 42 U.S.C. § 5304(g) as recipient of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant funds, for conducting environmental review of projects receiving HUD funds in accordance with the National Environmental Policy Act (“NEPA”), 24 CFR Part 58, Section 106 of the National Historic Preservation Act and related laws; and

WHEREAS, LMDC proposes to provide such HUD funding to ABC No Rio to support its proposed construction of new facilities (the “Project”) as part of LMDC’s Community and Cultural Enhancement Program; and

WHEREAS, the New York City Department of Housing Preservation and Development was the lead agency for review of the Project pursuant to the State Environmental Quality Review Act (“SEQRA”) and City Environmental Quality Review (“CEQR”) and classified the Project as an Unlisted action; and

WHEREAS, the lead agency issued a Negative Declaration under SEQRA and CEQR on February 10, 2012; and

WHEREAS, LMDC caused the preparation of an Environmental Assessment (“EA”) for the Project; be it

RESOLVED, that, on the basis of the materials presented to this meeting, a copy of which are hereby ordered filed with the records of the Corporation, the Corporation hereby approves the Environmental Assessment (“EA”) for the ABC No Rio Project in the form submitted at this meeting and finds that the EA meets the requirements of NEPA, SEQRA, the National Historic Preservation Act, the State Historic Preservation Act, and other applicable laws and regulations, and is adequate for the purpose of public review; and be it

FURTHER RESOLVED, that, on the basis of the EA, including its appendices, and subject to public comment, the Corporation concurs with the lead agency’s Negative Declaration under SEQRA and hereby determines and finds that the ABC No Rio Project will not, either individually or cumulatively, have a significant impact on the quality of the human environment or a significant adverse environmental impact and that no environmental impact statement is required for the Project under NEPA or SEQRA; and be it

FURTHER RESOLVED, that, the President of the Corporation or his designee is authorized to issue for public comment for no less than the legally-required period a Finding of No Significant Impact under NEPA and a Negative Declaration under SEQRA with respect to the ABC No Rio Project; and be it

DRAFT – SUBJECT TO REVIEW AND REVISION

FURTHER RESOLVED, that if LMDC does not receive comments that raise substantial new environmental issues requiring changes to the EA or environmental findings, the President of the Corporation is hereby authorized following the end of the requisite comment period to complete any certifications in the name and on behalf of the Corporation required to finalize such findings and to request a release of funds from the U.S. Department of Housing and Urban Development; and be it

FURTHER RESOLVED, that the President of the Corporation or his designee(s) is hereby authorized and directed, 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 may in his sole discretion consider necessary or appropriate to effectuate the foregoing resolutions; 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.

* * *

The Chairman then called for a vote on ABC No Rio sub-recipient agreement and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Enter into Subrecipient Agreement with ABC No Rio

RESOLVED, that, following HUD's approval of LMDC's request for release of funds and certification for the ABC No Rio Project, the Corporation is hereby authorized to enter into a subrecipient agreement with ABC No Rio in an amount not to exceed \$275,000 in the aggregate to provide funds to support the construction of the ABC No Rio Project, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that any expenditures pursuant to the subrecipient agreement authorized hereby shall be allocated from funds included in the Community and Cultural Enhancement Program in the Final Action Plan; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized, after approval by the HUD of LMDC's request for release of funds and certification for the ABC No Rio Project 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

DRAFT – SUBJECT TO REVIEW AND REVISION

approved in all respects.

* * *

Chairman Schick then asked the Directors to approve an amendment to LMDC’s contract with Studio Daniel Libeskind. Among other things, the Chairman explained that this is a request for an extension of the contract that does not involve a monetary increase.

Following the 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 Contract with Studio Daniel Libeskind

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Studio Daniel Libeskind for planning services relating to the World Trade Center Memorial and Redevelopment Plan to extend the term of such agreement through April 30, 2013, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated through from funds included in Partial Action Plan 8; 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.

* * *

Chairman Schick then asked the Directors to authorize LMDC to enter into agreements for cost estimating scheduling, construction feasibility and pre-construction services

DRAFT – SUBJECT TO REVIEW AND REVISION

agreements. The Chairman noted that these services are for projects that have been approved and are already underway and there are certain responsibilities that fall to LMDC with regard to those projects. The Chairman further explained that money would come through the partial action plans that have already been approved for those particular projects.

Mr. Emil noted with regard to this item, that this will principally support work associated with the Performing Arts Center as that project moves forward.

Following the full presentation, the Chairman called for questions or comments.

Hearing none and upon motion duly made and seconded, the following resolutions were unanimously adopted:

Authorization of Cost Estimating, Scheduling, Construction Feasibility, and Pre-Construction Services Agreements

RESOLVED, that the Corporation is hereby authorized to enter into agreements for up to a three-year period with each of Faithful + Gould, ELLANA Inc. and Hunter Roberts Construction Group for cost estimating, scheduling, construction feasibility and pre-construction services, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the combined expenditures under all such agreements shall not exceed \$500,000 in the aggregate; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds included in the appropriate 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

DRAFT – SUBJECT TO REVIEW AND REVISION

approved in all respects.

* * *

Lastly, Chairman Schick asked the Directors to authorize LMDC to amend its contracts for legal services with Dewey & LeBoeuf and Weil, Gotshal & Manges.

Chairman Schick noted with regard to the Weil, Gotshal contract, authorization is being sought to extend the contract and that funds will not be added to that contract.

With regard to the Dewey contract, Chairman Schick noted that because of the Bovis litigation, funds will be added to that contract.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Contract with Dewey & LeBoeuf LLP

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Dewey & LeBoeuf LLP for legal services in connection with the pending litigation relating to the abatement and deconstruction of 130 Liberty Street, to increase the authorized expenditures thereunder by up to an additional \$5,000,000 and to extend the contract term by one year through March 31, 2013, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from LMDC's settlement with the prior insurers of the Deutsche Bank building, the Legal Affairs Department Budget and/or through Partial Action Plans 7 and S-2 as may be appropriate; 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

DRAFT – SUBJECT TO REVIEW AND REVISION

foregoing by the Corporation’s employees, Officers or Directors are hereby ratified and approved in all respects.

* * *

Authorization to Amend Agreement with Weil, Gotshal & Manges LLP

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Weil, Gotshal & Manges LLP for legal advice and services in connection with the World Trade Center Memorial and Redevelopment Plan to extend the term for an additional one-year period through June 30, 2013, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds through Partial Action Plans 7 and S-2 as may be appropriate; 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.

* * *

Lastly, the Chairman noted that the Assembly Speaker’s Chief of Staff, Judy Rapfogel, had to leave the meeting before she had the opportunity to convey the Speaker’s request that the LMDC Board, at a future time, consider extending the Traffic Management Program that the Corporation implemented downtown. He stated that he will discuss this with the Speaker and get back to the Board on that issue.

There being no further business, the meeting was adjourned at 9:38 a.m.

Respectfully submitted,

Eileen McEvoy
Assistant Corporate Secretary