

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

October 31, 2013

MINUTES

In Attendance

Directors:

Avi Schick, Chairman
Amanda Burden (via telephone)
Robert Douglass (via telephone)
Robert Harding
Caswell Holloway
Catherine McVay Hughes
Thomas Johnson
Kate D. Levin
Kevin Rampe
William Rudin
Robert K. Steel
Carl Weisbrod (via telephone)

Staff Attending:

For Lower Manhattan Development Corporation:

David Emil, President
Daniel Ciniello, Senior Vice President – Operations
Robert Miller, Chief Financial Officer
Stephen Konopko, Vice President – Internal Audit
Goldie Weixel, Assistant General Counsel

For Sheldon Silver:

Judy Rapfogel

Also Present:

The Media
The Press

The meeting of the Lower Manhattan Development Corporation (“LMDC”) commenced at 8:06 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.

Before proceeding to the business of the meeting, Mr. Emil explained that shortly after approving the Minutes, an Executive Session will be held to consider a contract with Winston and Strawn, the law firm representing LMDC on the Bovis matter.

Mr. Emil, acting in Chair Schick’s stead, asked the Directors to ratify and approve the Minutes of the April 14, 2013 Directors meeting.

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

Approval of April 14, 2013 Meeting Minutes

RESOLVED, that the minutes of the meeting of the Corporation held on April 14, 2013, 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.

* * *

Mr. Emil then asked the Directors to approve the appointment of Richard Davis as Acting General Counsel and Secretary to LMDC.

Mr. Emil further noted that the Directors are also being asked to extend Mr. Davis’ contract through December 31, 2014 and to increase it by \$50,000 to bring the total contract to \$99,500.

Mr. Emil provided a brief synopsis of the background information regarding these requests.

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

Election of Officer

RESOLVED, that Richard J. Davis is hereby elected Acting General Counsel and Secretary of the Corporation, and shall serve until such time as his successor is duly elected or until his earlier resignation or removal.

* * *

Authorization to Amend Agreement with Richard J. Davis

RESOLVED, that the Corporation is hereby authorized to amend its contract with Richard J. Davis to serve as LMDC's Acting General Counsel and Board Secretary, extending the term for an additional one-year period through December 31, 2014 and to increase funding under the agreement by \$50,000, bringing the total contract value to \$99,500; and be it

FURTHER RESOLVED, that the proposed contract amendment will be funded from LMDC's fiscal year end 2014 Legal Affairs budget and the anticipated FYE 2015 budget, LMDC's settlement with the prior insurers of Deutsche Bank and Partial Action Plans 7, and S-2 as may be appropriate; 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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Chairman Schick entered the conference room and reported on two pieces of positive information regarding the Bovis litigation.

First, he noted that fact discovery, expert discovery and depositions are all done and it is staff's belief that the evidence came in quite strongly in LMDC's favor.

Next, Chair Schick reported that earlier this year, LMDC had obtained a decision from the First Department that was very favorable to LMDC dismissing the majority of the claims that Bovis had procured and allowing LMDC's claims to proceed. Bovis sought reconsideration and rehearing of that decision or permission to appeal to the Court of Appeals and earlier this week, Chair Schick explained, that motion was unanimously denied by the Appellate Division.

Chair Schick then asked Director Johnson to provide the Audit and Budget Report.

Director Johnson first noted that the Committee met to review the funding authorizations that are being presented for consideration today and that the Committee recommends that the items be considered for approval by the Board.

Director Johnson also noted that the Committee met with the Auditor and that the Committee is completely satisfied with the outcome of that meeting.

Mr. Johnson expressed his appreciation particularly to the long standing members of the staff for continuing to do a very professional and dedicated job.

Mr. Johnson then noted that the LMCCC has received funds from the Port Authority prior to the expiration of the deadline to take it to the end of this year.

Chairman Schick thanked Mr. Johnson for the report and for the work that goes into it.

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 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 moved to another conference room for the Executive Session. The Executive Session ended at 8:43 a.m. It was noted for the record that no votes were taken during the Executive Session.

Chairman Schick then asked the Directors to authorize LMDC to amend its contract with Winston and Strawn LLP and further to authorize the amendment of Partial Action Plan S-2.

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 to Amend Contract with Winston & LLP; Authorization to Amend Partial Action Plan S-2

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Winston & Strawn LLP for legal services in connection with the pending litigation relating to the abatement and deconstruction of 130 Liberty Street, to extend the contract term by one year through March 31, 2015, to increase the authorized expenditures thereunder by up to an additional \$7.425 million, and to cap the value of the contract at \$18.425 million through a final judgment at the trial court level; and agree to a fee arrangement for potential actual eligible costs incurred above the capped \$18.425 million contract value contingent on a significant recovery by LMDC as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plan S-2 (the "Amended Partial Action Plan S-2"), to allocate \$7.425 million of funds to 130 Liberty Street from unallocated funds within the Other World Trade Center Area Improvements Program for the expenses described above; 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 Partial Action Plan S-2, 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 Partial Action Plan S-2 as may be necessary or appropriate to comport with applicable HUD requirements and to reflect any public comments solicited and received thereon; provided any changes so made shall be consistent with the criteria set forth in such Amended 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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Chair Schick then asked the Directors to approve two other requests to extend contracts with legal counsel.

Chair Schick stated that one of the requests related to the law firm of Duane Morris which handles some of LMDC's construction litigation. The other request, he noted, related to ESD pre-qualified legal counsel contracts.

The Chair noted with regard to these requests that money is not being added to these contracts and the requests are merely for extensions of time for both contracts.

Following the full presentation of each of the above-noted requests, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolutions were unanimously adopted:

Authorization to Amend the 130 Liberty Street Legal Services Agreement with Duane Morris LLP

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Duane Morris LLP for legal advice and services in connection with 130 Liberty Street to extend the term of such agreement through December 31, 2014, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated through LMDC's settlement with the Prior Insurers of the Deutsche Bank building, or Partial Action Plans 7 and S-2 as 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.

* * *

Authorization to Extend Pre-Qualified Counsel Agreements for Legal Services

RESOLVED, that the Corporation is hereby authorized to extend its Agreements with one or more law firms on the Empire State Development Corporation Pre-Qualified Counsel List through December 31, 2014; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from the appropriate fiscal year budget for the Legal Affairs Department and/or the appropriate project-related 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.

* * *

Chair Schick then asked Mr. Emil to present an item seeking authorization to amend Partial Action Plan 2 and to further authorize LMDC to amend its recipient agreement with Empire State Development for the Job Creation and Retention Program.

Mr. Emil noted that the Job Creation and Retention Program is managed by ESD. He explained that the program provides discretionary incentive grants to companies making a commitment to retain 200 jobs and create 75 full-time jobs in Lower Manhattan.

Mr. Emil continued and explained that there is \$36 million in funding available. These funds, he noted, were provided by LMDC to ESD which acts in conjunction and cooperation with the New York City Economic Development Corporation in supervising the Program.

Mr. Emil further explained that additional funds are not being requested for this program but rather LMDC is seeking authorization to extend the date of grant availability for this Program to December 31, 2015.

Following Mr. Emil's full presentation, the Chair 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 2; Authorization to Amend Subrecipient Agreement with Empire State Development

RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plan 2 (the "Amended Partial Action Plan 2"), to extend the date of grant availability for the Job Creation and Retention program to December 31, 2015 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 Partial Action Plan 2, 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 Partial Action Plan 2 as may be necessary or appropriate to comport with applicable HUD requirements and to reflect any public comments solicited and received thereon; provided any changes so made shall be consistent with the criteria set forth in such Amended Partial Action Plan; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend its subrecipient agreement with Empire State Development to extend the date of grant availability for the Job Creation and Retention Program to December 31, 2015, 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.

* * *

The Chair then provided a presentation with regard to the request to authorize LMDC to extend its contract with Studio Daniel Libeskind. The Chair also asked the Directors to authorize LMDC to extend its Environmental Consulting Services Contracts.

The Chair noted that both of these requests involve extensions of time and not any additional funding.

Following these presentations, 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, 2015 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 Plans 8, 11, 12 or 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.

* * *

Authorization to Extend Agreements for Environmental Services

RESOLVED, that the Corporation is hereby authorized to enter into agreements, for a two-year period through September 30, 2014, with each of AKRF, Inc., BEM Systems, Inc., LIRO Engineers and TRC Companies, Inc., for environmental services, 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 or LMCCC department budget 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.

* * *

Lastly, Chair Schick asked the Director's to authorize LMDC to amend its web hosting and maintenance services contract.

Chair Schick noted that this extension request also involves an increase in the allocation of approximately \$42,000 of funds which is what it costs to maintain it over the coming year.

The Chairman further explained that LMDC's agreements with HUD require the Corporation to have a substantial number of items publicly available and publicly posted and this is LMDC's vehicle for compliance with that HUD requirement.

Director Levin then asked for clarification as to when the request for dollars would fall.

She asked if the funds are for the next fiscal year or through December 31st of this year.

Mr. Emil stated that the funds are substantially for the calendar year not the fiscal year so they overlap. LMDC's agreement, he continued, is for a calendar year so the funds overlap with this existing fiscal year and into the next fiscal year. Mr. Emil added that that will be reflected in the next fiscal budget which will be presented in Spring 2014.

Director Harding asked if the extension takes it to December 31, 2014 and Mr. Emil stated that that was correct.

Director Levin asked for a clarification as to the amount requested and Mr. Emil stated that it is \$42,000.

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 Amend LMDC Web Hosting and Maintenance Services Contract

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Something Digital, Inc. for website hosting, maintenance and support services related to the Corporation's website, www.RenewNYC.com, to extend the term of the agreement by one year through December 31, 2014, and to increase funding under the contract by \$42,000 for a total contract value not to exceed \$283,760; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from funds in the FYE 2014 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 and 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.

Mr. Emil then noted that as part of LMDC's general effort to scale down the operations of the agency staff has been leaving or being placed in other agencies. He went on to explain that all of LMDC's IT staff has moved to Battery Park City Authority which needed IT staff. He added that they have been kind enough to come over today to assist with the Directors' meeting.

* * *

There being no further business, the meeting was adjourned at 8:51 a.m.

Respectfully submitted,

Eileen McEvoy
Assistant Corporate Secretary