

LOWER MANHATTAN DEVELOPMENT CORPORATION

Meeting of the Directors
Borough of Manhattan Community College
Fiterman Hall
245 Greenwich Street, Room 1304
New York, New York 10007

March 18, 2016

MINUTES

In Attendance

Directors:

Joseph Chan, Chairman
Robert Douglass (via telephone)
Alicia Glen
Thomas Johnson (via telephone)
Catherine McVay-Hughes
Mehul Patel
Carl Weisbrod
Peter Wertheim
Dominic Williams

Staff Attending:

For Lower Manhattan Development Corporation:

David Emil, President
Daniel Ciniello
Stephen Konopko
Laura Rogers, Associate Counsel
Eileen McEvoy, Secretary

For Empire State Development:

Alexis Offen

Also Present:

The Public
The Media
The Press

The meeting of the Lower Manhattan Development Corporation (“LMDC”) was called to order at 10:06 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.

Next, the Chair set forth the guidelines regarding comments by the public on matters on the Agenda noting that in the interest of an expeditious meeting, there will be one public comments period at the end of the meeting. The Chair also provided the guidelines with regard to any conflicts of interest any of the Directors may have regarding items on the Agenda. No conflicts were noted.

The Chairman then called for a motion to approve the Minutes of the November 12, 2015 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 12, 2015, 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.

* * *

The Chair then asked Director Johnson to provide the Audit and Finance Committee's report for the Directors' information.

Director Johnson noted that the Committee met on March 10th to review the funding authorization requests and action plan amendments that are being considered by the Directors today including the Litigation Settlement Funding Plan.

Director Johnson noted that the Committee also reviewed and supports the commitment of funds requested for the Pier 42 demolition work and additional planning on that project.

Director Johnson further noted that the Committee also reviewed and supports the proposed action plan amendments described in the materials which will enable staff to close several action plans and allocate an additional \$5,000,000 to Pier 42.

Director Johnson went on to explain that the Committee reviewed and discussed the new office space agreement which will save the organization a significant amount of money; the contract for external auditing services; and the 130 Liberty Street litigation time expansion, which includes a significant dollar contract reduction. He added that the Committee supports the approval of all of these actions.

Director Johnson added that the Committee reviewed the proposed operating budget for LMDC for the fiscal year that starts April 1, 2016 and ends March 31, 2017.

Director Johnson noted that the proposed budget reflects a 21 percent overall expense reduction in comparison to the current budget for the year just now about to end. The Committee, he added, recommends the adoption of the budget as presented to the Board.

Director Johnson added that the Committee reviewed the purpose, cost justification and availability of funding for all of the resolutions in recommending that they be considered for approval by the entire board.

Director Johnson also noted that the HUD office of Inspector General Auditors recently issued its 20th congressionally mandated audit report of the LMDC and once again, no material deficiencies, findings, irregularities or recommendations for improvement were noted.

Director Johnson also noted that the Committee met with the internal auditor and reports that there are no irregularities or findings of concern.

Chair Chan noted that he had skipped over the Chairman's Report and that in fact he really had only one comment to make and that that comment is relevant to Director Johnson's report.

The Chair stated that LMDC has been contacted by HUD and informed that as this Administration is winding down and LMDC is also winding down, HUD would like to work closely with LMDC over the course of this calendar year to make sure that the remaining

moneys that have not been spent to date are on track to be spent on projects that can be implemented.

The Chair added that LMDC has been working closely with the City to that end.

The Chair then asked Director McVay-Hughes and Mr. Emil to provide a brief summary regarding a request to approve the Litigation Settlement Funding Plan and to amend Partial Action Plan S-2.

Director McVay-Hughes noted that there was extensive community outreach on the process of these funds. She added that the process included thorough analysis which included many meetings, site visits and pouring through the financial statements of the institutions.

Director McVay-Hughes further noted that the institutions were looked at to make sure that as many people as possible could benefit from these funds.

Mr. Emil reiterated the Chair's comment that one of the criteria was the ability to move this money quickly and to complete projects that LMDC has committed to over the years.

Mr. Emil then went on to read the slate of proposed projects to be funded and the recommended funding amounts for those projects.

Among other things, the Chair noted that a summary of the projects will be posted on LMDC's website.

Mr. Emil then noted that today the Directors are being asked to approve the slate and that the individual sub-recipient agreements will be presented to the Board at a later date.

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

Approval of the Litigation Settlement Funding Plan (proposed Slate) and Authorization to Amend Partial Action Plan S-2

RESOLVED, that the Litigation Settlement Funding Plan in an amount of up to \$50,000,000 allocated as a part of Partial Action Plan S-2, as presented to this meeting, a copy of which shall be filed with the records of the Corporation, is hereby adopted; and be it

FURTHER RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plan S-2 consistent with the Litigation Settlement Funding Plan 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 shall be 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; and be it

FURTHER RESOLVED, that prior to the expenditure of the funds set forth in the Litigation Settlement Funding Plan, (i) the federal Department of Housing and Urban Development shall have approved amended Partial Action Plan S-2 submitted for such purpose, (ii) the Board of Directors shall have approved each such expenditure and the agreements to be entered into

connection therewith, in accordance with applicable policies of the Corporation, and (iii) related approvals as may be required shall have been obtained; 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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Next, Mr. Emil asked the Directors to authorize LMDC to enter into a sub-recipient agreement with the City of New York to provide additional funds for Pier 42.

Mr. Emil explained that the Directors were being asked to authorize LMDC to enter into a sub-recipient agreement of just under \$7 million for the abatement and demolition of portions of the existing Pier 42. He added that this is the first phase of work to actually begin Pier 42 and that this is all demolition and clearing and there will be no construction.

Mr. Emil further noted that additional design funding will also be requested later in the meeting so LMDC can continue planning the project.

Director McVay-Hughes noted for the record that this is consistent with the resiliency planning along the East River Waterfront.

Following the full presentation by Mr. Emil, the Chair called for question or comments from the Directors. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend or enter into a Sub-recipient Agreement with the City of New York to Provide Additional Funds for Pier 42

RESOLVED, that following HUD's approval of LMDC's request for release of funds and certification for the Pier 42 Project, the Corporation is hereby authorized to amend its sub-recipient agreement with The City of New York through its Department of Parks and Recreation related to Pier 42, to increase funding by \$6,980,000 to an amount not to exceed \$8,800,000, or to enter into a new agreement with the Department of Small Business Services (SBS) for \$6,980,000, 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 the Final Action Plan and Partial Action Plan 10; 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 Partial Action Plan 1, 9 and the Final Action Plan.

Mr. Emil noted that this item is an example of the conclusion of various action plans which have been held open over the years as LMDC gradually completes the contract work under the programs.

Mr. Emil then called on Mr. Ciniello to address the item.

Mr. Ciniello stated that this represents a technical amendment. He added that in closing out a couple of projects that have been completed, LMDC needs to close the contracts to ultimately close the project which in turn allows LMDC to close action planning.

This action, Mr. Ciniello noted, will enable LMDC to close one or possibly two action plans in the near future and move the residual funds to the final action plan under the category of economic development.

Following Mr. Emil's full presentation, the Chair called for questions or comments from the Directors. Director Patel asked how many partial action plans were in existence and Mr. Ciniello stated that there were 15.

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

Authorization to Amend Partial Action Plans 1, 9 and Final Action Plan

RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plans 1 and 9 and the Final Action Plan (the "Amended Action Plans"), to: reduce Partial Action Plan 1 allocations for the Residential Grant Program by \$123,743 and the Employee Training and Assistance Program by \$8,229; reduce Partial Action Plan 9 allocations for the Lower Manhattan Public Information Program by \$21,444; and increase Final Action Plan allocations for the Economic Development activity by \$153,417, 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 shall be 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; 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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Mr. Emil then asked the Directors to authorize LMDC to amend Partial Action Plan 3, 10 and 12.

Mr. Emil noted that the item relates to the reallocation of funds within action plans where prior funding allocations were not spent because of changes in the project.

These funds, Mr. Emil noted, amount to \$5,000,000 and will be re-allocated to the Pier 42 project.

Director Glen then noted for the record that this \$5,000,000 added to the previously approved \$7,000,000 will provide a fresh new \$12 million available for work connected to Pier 42.

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

Authorization to Amend Partial Action Plans 3, 10 and 12

RESOLVED, that the Corporation is hereby authorized to amend Partial Action Plans 3, 10 and 12 (the "Amended Action Plans"), to: reduce Partial Action Plan 3 allocations for the Columbus Park activity by \$231,165; reduce Partial Action Plan 12 allocations for the NYC Parks and Open Spaces activity by \$4,768,835; and increase Partial Action Plan 10 allocations for the East River Waterfront Pier 42 activity by \$5,000,000, 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 shall be 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; 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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Mr. Emil then asked the Directors to approve the 2016/2017 Operating Budget. He outlined the various aspects of the reduced budget and noted, in part, that all of the funds are federal funds and that no State or City funds are in the budget.

Following the full presentation, the Chair then called for any further questions or comments from the Directors. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Approval of the Lower Manhattan Development Corporation Budget for Fiscal Year 2016
– 2017

RESOLVED, that the budget of the Corporation for fiscal year 2016-2017 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

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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Mr. Emil then asked the Directors to authorize LMDC to execute the LMDC Office Space Agreement.

Mr. Emily explained that this is not strictly a lease but is actually a space use agreement. He then went on to outline the various terms of the agreement.

Director Weisbrod clarified certain conditions of the agreement which represent a theoretical risk which is, for various reasons, a fairly modest risk.

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

Authorization to Enter Into Office Space Agreement

RESOLVED, that the Corporation is hereby authorized to enter into an agreement with A&N Design Studio, Inc. d/b/a "Door3 Business Applications" (Door3) for use of a portion of its office space located at 22 Cortlandt Street, 11th Floor, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that such agreement shall be for up to a two-year period commencing April 1, 2016 for an amount not to exceed \$400,000 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 Fiscal Year End (FYE) 2017 Administration Budget and the anticipated FYE 2018 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 or appropriate to effect the foregoing.

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Next, Mr. Emil asked the Directors to authorize LMDC to execute an agreement for External Audit Services. He provided the relevant information in connection with this request.

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

Authorization to Enter into an Agreement for External Audit Services

RESOLVED, that the Corporation is hereby authorized to enter into an agreement with EFPR Group (formerly Toski, Schaefer & Co., P.C.) for independent auditing services for up to a three year period for \$120,000, 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 Finance Department Budget for fiscal years ending March 31, 2017, 2018, and 2019; 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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Mr. Emil then asked the Directors to authorize the Corporation to extend the Litigation Services Contract. Mr. Emil provided the relevant information with regard to this request.

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

Authorization to Extend Terms of Agreement with Winston & Strawn LLP for 130 Liberty Street Litigation Services

RESOLVED, the Corporation is hereby authorized to amend its 130 Liberty Street litigation contract with Winston & Strawn LLP to extend the terms of this agreement by one year through March 31, 2017 and decrease the contract amount from \$18,425,000 to \$15,700,000; and be it

FURTHER RESOLVED that the expenditures approved hereby will be funded through LMDC's settlement with the Prior Insurers of the Deutsche Bank building or Partial Action Plan 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 and appropriate to effect the foregoing.

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The Chair then called for comments from the public with regard to items on the Agenda. No public comments were made.

There being no further business, the meeting was adjourned at 10:44 a.m.

Respectfully submitted,

Eileen McEvoy
Secretary