LOWER MANHATTAN DEVELOPMENT CORPORATION

in partnership with

EMPIRE STATE DEVELOPMENT
and
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Partial Action Plan S-2
for
Utility Restoration and Infrastructure Rebuilding

Overview

The Lower Manhattan Development Corporation (LMDC) has prepared the following amended Partial Action Plan with regard to the $783 million federal appropriation administered by the United States Department of Housing and Urban Development (HUD) for damaged properties and businesses (including the restoration of utility infrastructure) as well as for economic revitalization related to the terrorist attacks at the World Trade Center. This amended plan details the proposed expenditure of $750,000,000 of the $783 million appropriation. The balance of $33 million is addressed in a separate partial action plan as approved by HUD on September 15, 2003. LMDC received a separate $2 billion federal appropriation through HUD for the World Trade Center disaster recovery and rebuilding efforts.

This Plan details programs to restore, rebuild, and revitalize utility infrastructure in Lower Manhattan and to continue the deconstruction of 130 Liberty Street. The programs will be administered by LMDC and the New York State Urban Development Corporation d/b/a Empire State Development (ESD), New York State's economic development agency, in cooperation with the Economic Development Corporation (EDC), the City of New York's development agency, and in consultation with the LMDC.

Partial Action Plan Activities	Allocation from $750 million
I. Utility Restoration & Infrastructure Rebuilding	
1. Emergency and Temporary Service Response	$ 250,000,000.00
2. Permanent Restoration and Infrastructure Improvements	$ 330,000,000.00
3. Service Interference	$ 60,000,000.00
4. Construction of Carrier Neutral Lateral Conduits	$ 35,000,000.00
5. Redundant Fiber Connections to Critical Facilities	$ 5,000,000.00
6. Mandated Infrastructure Improvements	$ 0.00
II. Program Administration	
a. ESD Program Management	$ 10,000,000.00
b. LMDC Program Monitoring	$ 3,500,000.00
c. NYC MOSAICS Permit Management System	$ 4,000,000.00
III. 130 Liberty Street Deconstruction Program	$ 52,500,000.00
TOTAL	**$ 750,000,000.00**

The first Partial Action Plan amendment approved by HUD on September 3, 2008 created the additional category "130 Liberty Street Deconstruction Program" and allocated $37.5 million to it. The amendment reallocated $25 million of funds from Category 5 and $12.5 million from Category 6 for this additional program.

A Second Partial Action Plan amendment was published on October 1, 2009, reallocating $2.5 million from Category 5 to ESD Program Management. This Second Amendment reduced the Category 5 allocation from $7.5 million to $5 million and increased ESD Program Management from $7.5 million to $10 million.

A Third Partial Action Plan amendment was published on January 10, 2010, reallocating $15 million from Category 4 of the Utility Restoration & Infrastructure Rebuilding Program to the 130 Liberty Street Deconstruction Program. This Third Amendment reduced Category 4 from $50 million to $35 million and increased the 130 Liberty Street Deconstruction Program from $37.5 million to $52.5 million.

Any of the following constitutes a substantial amendment of this plan and such amendment will be available for public review and approval by HUD:

- The elimination of any of the activities identified by this Partial Action Plan;
- Any fundamental change in the eligibility criteria for funding under this Partial Action Plan; or
- The addition of any activities not defined by this Partial Action Plan.

National Objective

The LMDC is a subsidiary of the ESD created in December 2001 to oversee the rebuilding and revitalization of Lower Manhattan. The activities contained in this Partial Action Plan have been designed to meet community and development needs resulting from the September 11th World Trade Center disaster. These activities have particular urgency because LMDC has determined that existing conditions pose a serious and immediate threat to the health or welfare of the City and its residents and other financial resources are not available to meet such needs.

Public Comment to the Partial Action Plan

Initial Partial Action Plan
This Partial Action Plan was initially made available to the public for public comment from May 28, 2003 to June 12, 2003. Comments were accepted by posted mail and electronic mail. The Partial Action Plan Draft for Public Comment was translated into Chinese and Spanish. LMDC placed advertisements inviting public comment on the draft plan in major New York City English, Spanish, and Chinese-language daily newspapers and weekly community newspapers serving lower Manhattan. In addition, the text of the draft plan was made available on LMDC's web site (www.RenewNYC.com).

LMDC delivered copies of the partial action plan to over 25 civic and neighborhood-based organizations throughout Lower Manhattan - including locations in Chinatown and the Lower East Side, such as Chinatown Manpower Project, Asian Americans for Equality, Chinese Consolidated Benevolent Association, the Lower East Side Business Improvement District, the Educational Alliance, Community Boards 1, 2, and 3, and several local library branches. LMDC also sent the documents electronically in three languages to nearly 200 LMDC Advisory Council members, representing a broad array of stakeholders including residents, small business owners, and neighborhood organizations, in addition to 12 other organizations, such as Henry Street Settlement, University Settlement, and others. Copies of the Partial Action Plan were also delivered to the offices of every state, city, and federal elected official who represents all or part of Lower Manhattan south of Houston Street.

LMDC received 14 public comment submissions relating to Partial Action Plan S-2 ($750 million).

The responses to comments received during the comment period have been incorporated into this Partial Action Plan as Submitted to HUD and are reviewed in section IV below.

First Partial Action Plan Amendment
The proposed amendment was open to public comment from June 27, 2008 through July 30 2008. Comments were accepted by posted mail and electronic mail. LMDC placed invitations to public comment for this amendment in English, Spanish and Chinese daily newspapers. In addition, the text of the draft plan was made available on LMDC's website (www.renewnyc.com).

LMDC delivered copies of this amendment in English, Spanish, and Chinese to approximately 80 community, residential, civic and cultural organizations throughout Lower Manhattan, including all Lower Manhattan elected officials and Community Boards

LMDC did not receive any relevant comments on these proposed amendments

Second and Third Partial Action Plan Amendments
These amendments were not substantial amendments and were not made available for public comment.

I. Utility Restoration and Infrastructure Rebuilding

Program Objectives

The World Trade Center attacks inflicted widespread destruction upon the energy (electric, gas, and steam) and telecommunications utility infrastructure, resulting in extensive disruptions in service to the business and residential communities of Lower Manhattan. The energy and telecommunications firms responded rapidly in the aftermath of the disaster to provide emergency and temporary services and they are currently working to restore permanent service to all customers located within Lower Manhattan. The costs to deliver emergency and temporary services and to rebuild damaged infrastructure for permanent service delivery are considerable and have been borne by the affected utility service providers to the extent not covered by their insurance providers or funds from other sources such as lawsuits.

Congress appropriated $750 million to assist with the revitalization of Lower Manhattan for the restoration of utility service, the rebuilding of utility infrastructure, and to help properties and businesses.[1] The objectives of the Utility Restoration and Infrastructure Rebuilding program are (1) to protect business and residential customers from bearing the cost of the infrastructure rebuilding; and (2) to enhance the revitalization and redevelopment of Lower Manhattan as a world-class commercial and residential community by encouraging investment in energy and telecommunications infrastructure. Funds allocated through this program will accordingly seek to:

- Offset uncompensated emergency response, restoration, and rebuilding costs borne by the utility service providers that might otherwise be passed through to customers. Uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses.

- Maintain Lower Manhattan as a competitive and attractive location for business, cultural, and residential development by assisting in the redevelopment of cost-competitive and quality-competitive energy and telecommunications services.

This program will provide financial assistance directly to energy and telecommunications service companies for reimbursement of qualified emergency and temporary restoration costs and will provide monies for permanent restoration. To remain consistent with Congressional intent for the appropriation, this program has been structured to allocate funds that give greatest priority to the restoration of destroyed utility infrastructure, and the consequent protection that affords to impacted business and residential customers.

Program Coordination

ESD/EDC seeks to coordinate the efforts of federal and state grant programs to the fullest extent possible. The program priorities are to ensure construction efficiencies, avoid duplicative construction work, and to maximize the use of state and federal funding. Thus, close coordination of projects resulting from the various federally funded programs administered by New York State and City agencies and ESD/EDC is necessary. Work on the streets will be

[1] An Act Relative to Making Supplemental Appropriations, Pub.L.No. 107-206, 116 Stat. 889 (2002).

coordinated with NYS Department of Transportation (NYS DOT) and New York City Department of Transportation (NYC DOT). This action plan will encourage and promote joint work proposals and programs whenever and wherever possible.

Coordination is required for utility infrastructure work eligible for Categories Two, Three, Four, Five, and Six funding that occurs along the same street segments with City administered programs, notably the Federal Highway Administration Emergency Relief program[2] (ER program) and work initiated after the publication date of this Action Plan. This includes voluntary and/or mandated service enhancements/improvements and/or interference/maintenance project costs. All work that is coordinated and completed in conjunction with the ER program will be up to 100% reimbursable to the extent that funds are available. In such cases this program will make HUD funds available for the City for up to 100% of the costs associated with the infrastructure portion of coordinated utility work.

In situations where utility and City federally funded work (funds coming from HUD or the ER program) occur in the same street segment, the City and participating companies are directed, to the maximum extent possible and reasonable, to proceed in the following fashion:

- All participating entities shall coordinate with the City and State to develop an implementation program. To the greatest extent possible, it is expected that the City or State schedules will be preferred.

- A joint plan should be developed among the affected utilities, the City, and the State, that includes, to the fullest extent possible, coordinated methods of procurement that combine the planned utility infrastructure work with the City or State street restorations to maximize the use of the available funds and minimize delays in the progression of the infrastructure work.

- The City or State will coordinate all work scopes and service requirements for both utility and City or State infrastructure work into one bid package and follow applicable procurement rules to procure all project work.

- The City will manage the implementation of the coordinated procurement contract. All participating entities in a particular project are required to work closely with the City through implementation and approval of all appropriate work.

- In cases where coordination between utilities, the City, and State is not possible, and such work is necessary for utility restoration of permanent service, funds will be made available directly to the utilities for required interference cost reimbursement. Sole, eligible service provider costs will be reimbursed up to 75% of actual, uncompensated, incurred, and documented costs to the extent that funds are available. Uncompensated costs are those costs borne by the utility service provider after they have diligently and

[2] The Emergency Relief program provides funds to State and local governments for the repair of federal-aid highways seriously damaged by disasters. Congress made two appropriations to New York City and State for Lower Manhattan, for up to $267 million. Pub.L.No. 107-117, 115 STAT. 2328, Pub.L. No. 107-206, 116 STAT. 882.

aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses.

In addition, for all work completed under this Partial Action Plan, the utilities, firms selected through the RFP processes, and the City will jointly create an inventory of underground facilities in Lower Manhattan. The utilities are responsible for providing as-built drawings to the City, preferably in electronic format. Each organization will map its own facilities, accurately showing the work as installed. The standard for submitting these drawings is available at the City Department of Transportation Office of Construction, Mitigation, and Coordination. The current standard requires that such record drawings be signed, stamped, and sealed by a Professional Engineer. These record drawing requirements are to be considered part of the permitting process and the original record drawings are to be submitted to the NYC DOT Office of Construction, Mitigation, and Coordination.

Program Eligibility

Eligible applicants for this program are limited to investor-owned utility service providers under the jurisdiction of the New York State Public Service Commission (NYSPSC), the Federal Energy Regulatory Commission (FERC), or the Federal Communications Commission (FCC), with service territory in the affected area in Lower Manhattan, that incurred unreimbursed expenditures resulting from impact damage related to the attacks on September 11, 2001. (Note exception to eligibility below.)

For the purposes of this program, Lower Manhattan is the area on and south of Canal Street, from the East River to the Hudson River.[3] Publication of the Partial Action Plan serves as the solicitation for eligible submissions for damage reimbursement from utility service providers.

This Plan makes one exception to eligibility requirements above, for funding Categories Four (Construction of Carrier Neutral Lateral Telecommunications Conduit) and Five (Construction of Redundant Fiber Connections to Critical Facilities). Funding under these two categories is not restricted to regulated utilities that suffered damage related to the September 11, 2001 attacks. Eligible applicants under these two categories will be solicited through a Request for Proposals (RFP) process under the plan. Any firm able to demonstrate its qualifications to perform the proposed work may submit a proposal.

Eligible Costs

Eligible utility service providers may submit a request for reimbursement of uncompensated costs (uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses and not compensated by any other source of funds, including, but not limited to, other state or federal funds, or lawsuits) incurred for: (1) providing emergency, temporary, and permanent restoration of utility service to Lower Manhattan; and (2) the rebuilding of utility infrastructure. Lost revenues and business interruption losses are not eligible costs under this fund.

[3] Except for Category 6. See page 14.

With respect to claims for reimbursement of damages sustained as a result of the events of September 11, 2001: reimbursement covered under any applicable insurance policy shall be primary to any consideration for receipt of funding through this Partial Action Plan. As such, coverage under all applicable insurance policies shall pay first in the event that coverage was in place. Any uncompensated costs that remain after receipt of all applicable insurance recoveries may then be submitted for consideration under this Plan.

Eligible cost categories include:

Categories

1. Emergency and temporary service response
2. Permanent restoration and infrastructure improvements
3. Service interference
4. Construction of carrier neutral lateral conduit
5. Construction of redundant fiber connections to critical facilities
6. Mandated infrastructure improvements

ESD/EDC will allocate $697,500,035 among the categories listed above and recognizes that eligible costs incurred by the utility service providers and other eligible parties may exceed the total available for these programs. The eligible cost categories are listed in order of reimbursement priority. In the event that eligible costs exceed allocated funds, eligible costs for emergency and temporary response will be addressed first, with additional funding flowing upward from the lowest priority categories in which funds remain available. Upon the fulfillment of Category 1 requests, Category 2 will become the highest priority, with funds moving upward from the lowest available category to address requests in excess of the present allocation, and so forth, for Categories 3 and 4, as funds remain available.

Review of Eligible Costs

ESD/EDC has established a cooperative, multi-agency review process for the evaluation and validation of eligible costs and disbursement of funds with the New York State Department of Public Service (DPS). ESD will administer the program in cooperation with EDC. DPS staff will provide technical consultation to ESD/EDC to help determine the validity of eligible, incurred costs submitted by the utility service providers for reimbursement and their appropriate categorization within the priority hierarchy established above. Eligible service providers must submit incurred expenses for reimbursement in accordance with the expense categories outlined in this Partial Action Plan and the eligibility criteria described below. Service providers must allow DPS staff access to the financial books and records of the company and its affiliates (both regulated and unregulated) related to Lower Manhattan service delivery, in order to ensure confirmation of expenditures claimed for reimbursement and their appropriate categorization within the fund allocation hierarchy. Such access must also be extended to federal officials in accordance with administration of the federal funds for this program.[4]

[4] HUD regulation 24 CFR 570.490(c): representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

In instances where work is coordinated with City street work funded by FHWA, the service providers will also make available to City and State DOT and FHWA staff cost estimates and related financial records as the basis for contracting City street work.

Any service provider not seeking reimbursement for Category One expenditures (already reimbursed through insurance or other funds) is nonetheless encouraged to provide information about those costs and reimbursements to this program. This will assist ESD/EDC in establishing a clearer picture of total infrastructure costs incurred by category in recovering from the attack-inflicted damage.

Eligible costs are limited to those incurred for: (1) providing emergency, temporary, and permanent restoration of utility service to Lower Manhattan; and (2) the rebuilding of utility infrastructure. In the event that total reimbursement from all sources, including this fund, exceeds uncompensated losses, the recipient will return to ESD the excess funds.

Service providers seeking reimbursement must disclose all related insurance coverage and the status of pending and settled claims.

Role of Department of Public Service Staff

DPS staff will assist ESD/EDC in the examination and review of the costs incurred, including a recommendation of the cost category in which expenditures qualify for recovery. DPS staff will also review and check costs charged to the eligible companies' relevant books and records and will evaluate, to the extent possible, whether the requested reimbursement represents necessary improvement to the system. DPS staff will check costs for which companies seek reimbursement based on Generally Accepted Auditing Standards using sampling methods outlined in Statement on Auditing Standards (SAS) No. 39. SAS #39 generally defines Audit Sampling as "the application of an audit procedure to less than 100% of the items within an account balance or class of transactions for the purpose of evaluating some characteristic of the balance or class."

Categories of Eligible Costs

The following sections outline the six categories for classification and reimbursement of expenditures for utility operations in Lower Manhattan. Required deadlines for application and submission of eligible costs are noted under each cost category. Applicants are encouraged to submit applications as early as possible.

Allocation of Program Funds

ESD/EDC anticipates that the majority of non-reimbursed, uncompensated expenses incurred in Category 1 would be reimbursed up to 100%, once audited and verified. Uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses. Pending the availability of remaining funds, expenses incurred in Categories 2, 3, 4, 5, and 6 should be reimbursed at a partial level to ensure that available funds are apportioned among all affected firms, except if the work is coordinated with the City as provided under Program Administration, in which case the reimbursement will be up to 100% subject to availability of funds.

ESD/EDC recognizes that because of the scope and complexities of the different utility infrastructures involved, the time required to complete the audit and verification of each firm's respective submissions may differ substantially. The Partial Action Plan is structured to ensure that available funds will not be allocated simply on a "first come, first served" basis, but rather that each category of expense submitted by each utility will receive fair and equitable consideration.

As noted previously, Category 1 is considered the highest priority for reimbursement of incurred and confirmed costs. Should funds presently allocated to that category prove insufficient to cover verified submissions by utility service providers, available funds from Categories 5, then 4, then 3, then 2, in reverse priority order, will be reallocated to address eligible expenses in Category 1. Upon the fulfillment of Category 1 requests, Category 2 will become the highest priority, with funds moving upward from the lowest available category to address requests in excess of the present allocation, and so forth, for Categories 3 and 4, as funds remain available.

Finally, as a condition for receiving reimbursement for eligible costs, as described previously, applicants must certify that expenditures for which they have received compensation, either through insurance, jurisdictional cost allocations, tax credits or deductions, or gross revenue exclusions, other revenue recovery methods, and from this federal appropriations program, will not be assessed against customers. Moreover, recipients of funds will be under a continuing obligation to inform ESD/EDC of monies received from any outside source that compensate the recipient for any costs for which the recipient has been reimbursed pursuant to this plan. Service providers receiving funds will be in compliance with all applicable local, state, and federal regulatory requirements.

Environmental Regulations Compliance

Any application from a utility service provider for funds under this Partial Action Plan as approved will be considered, by HUD as a federal action. On the application date, unless the project has already been determined to be an *exempt activity* as defined by federal regulations, all physical development activities for the project site or activity proposed for receiving HUD financial assistance must halt pending environmental clearance of the project site or activity. A violation of these regulations by the state, its corporations, applicants, or the applicants' partners or contractors may result in disqualification of the use of HUD financial assistance for projects and activities found in violation under this program.

Generally, neither HUD funds nor non-HUD funds are to be committed or expended for a project receiving HUD assistance until there is compliance with National Environmental Policy Act (NEPA) and related federal laws and authorities and HUD has approved the environmental certification and a request for release of funds.

Category 1 (highest priority) - Emergency and Temporary Service Response - $250 Million

Eligible costs under this category were incurred to stabilize service delivery to Lower Manhattan, preserve public safety and public health, prevent additional destruction, provide rescue assistance, and construct the infrastructure necessary for temporary restoration of critical energy and communications services. Temporary restoration of service enabled the resumption of commerce and the start of recovery and rebuilding and assisted in preparation for the restoration of permanent service. Eligible costs will be reimbursed up to 100% of actual, incurred, uncompensated, and documented costs. Uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses.

Awards of funding will be based on the following criteria, although not necessarily with equal weighting:

(1) The degree to which a direct and dollar for dollar beneficial effect of funding on rates to consumers of the relevant public service is proven and assured;

(2) The extent to which the amount requested is for reimbursement of equipment and installation costs for repair or replacement of damaged infrastructure facilities and equipment that provide direct service to the public (as opposed to ancillary facilities serving the applicant that only indirectly service the public); and

(3) The extent to which the applicant has diligently and aggressively pursued its claims with its insurance companies within the terms and conditions of the applicable insurance policies covering their losses.

ESD/EDC recognizes that full audit and verification of submitted costs may be time consuming. Utility service providers may have carried the eligible costs of emergency service response for more than a year without reimbursement from insurance or other sources. ESD/EDC will extend immediate reimbursement, in the form of advance payments equivalent to one-third of requested, eligible costs for emergency and temporary service response reimbursement, within 30 days of receipt of a completed application with full documentation, and prior to completion of review and verification by ESD/EDC and DPS staff. The advance payments may be adjusted and will be subject to refund, upon review and confirmation of submitted documentation, with such adjustments incorporated into the full reimbursement payment for eligible costs under this category.

The deadline for application and submittal for reimbursement of documented, incurred Emergency and Temporary Service Restoration costs not otherwise covered by settled or pending insurance claims is September 30, 2003. The deadline for submittal for reimbursement of incurred costs that may or may not be partially covered by pending/settled insurance claims was March 31, 2004.

Category 2 - Permanent Restoration and Infrastructure Improvements - $330 Million

Eligible costs under this category are those incurred to permanently replace, restore, and enhance the equipment and infrastructure to deliver energy and telecommunications utility services. Where appropriate and cost effective, infrastructure restoration using current technology will likely exceed the service quality and/or capacity of the pre-September 11, 2001 systems being restored. Technology advances over the past two decades have brought significant improvements in utility infrastructure capacity and capabilities, particularly in telecommunications. In certain cases, restoration of permanent service in Lower Manhattan will reasonably entail the replacement of some infrastructure with more modern or resilient technology options. These options may improve the system by increasing capacity, service quality and/or public safety as compared to September 10, 2001 levels, at a marginally higher cost than that of prior generations of equipment or other options. Alternatively, companies may desire to implement significant infrastructure improvements at a greater than marginally higher cost.

ESD/EDC, in consultation with DPS staff, will evaluate the infrastructure improvement for its delivery of technological currency, increased capacity and/or capability, and improved resiliency. The applicant must demonstrate how local government and the business community were consulted in the development of the infrastructure improvement plan, and how that plan reflects the priority needs of Lower Manhattan redevelopment and public safety.

ESD/EDC consultations with local government and the business community have clearly identified priorities for telecommunications infrastructure improvement that must be incorporated into any proposal in order to qualify for funds under Category 2. (This Partial Action Plan does not impose any similar requirements on energy services providers.) Telecommunications infrastructure improvement must include prioritized as follows:

(1) Plans for development of fully redundant central office capacity; and
(2) A self-healing fiber optic ring for the Lower Manhattan service area.

Expenditures under this category will be reimbursed at 75% of incurred costs, subject to availability of funds, with the exception of street-related work coordinated with the City as provided under Program Coordination, in which case the reimbursement will be up to 100%.

Category 2 funding awards will be based on the following criteria:

(1) The extent to which the investment reflects the needs of local government and the business community regarding utility infrastructure in Lower Manhattan through:
    a. increased resiliency of utility service;
    b. increased capacity of utility service; and
    c. other benefits of technology and advanced utility infrastructure.
(2) The scope of the project proposal given the amount of funding requested.

The applicant bears the burden of proving that expenditures in this category provide for infrastructure restoration to similar or enhanced service levels prior to the attacks. Further, the application must clearly identify what was installed as permanent service improvements and restorations and further provide rationales as to why the investment in improved technology is in the best interests of the business and residential customers. Documentation must explain and justify fully why the selected technology is the most cost and quality competitive option available and why such system improvements should be assisted through federal recovery funds. Eligible costs will be reimbursed up to 75% of actual incurred, uncompensated, and documented costs (except street-related work coordinated with the City). Uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses.

In the event that sufficient funding is not available to meet all applications and submittals made under this category, reimbursement may be limited to such amount per applicant as ESD/EDC determines best meets the objectives of this plan within the established review process. Applicants are encouraged to submit proposals to incur costs for advance review prior to commitment of capital investment.

The deadline for submittal of documented incurred permanent service restoration and improvement costs was December 31, 2004. The deadline may be extended at the discretion of ESD/EDC.

Category 3 - Service Interference - $60 Million

Service interference costs pertain only to movement of existing utility infrastructure, but not to the placement of new infrastructure.

New York City has received monies from the Federal Emergency Management Agency (FEMA) and the Federal Highway Administration (FHWA) for street repairs and restoration to be accomplished over the five-year span designated by the FHWA plan. LMDC received funds from HUD (for this program) to help the utilities permanently restore damaged infrastructure and facilities, much of which is located under City and State streets. Coordinating City and State street restoration with utility infrastructure restoration will make maximum use of allocated federal funds, while minimizing costs and disruptions. The coordination of these program funds is outlined on pages 4-6 of this plan. ESD/EDC and DPS staff will review incurred costs under the service interference category, in partnership with applicable State, local, and federal agencies to ensure that approved costs are necessitated by conflicts with other rerouted City and State infrastructure.

This $60 million will be made jointly available to the utilities and the City or the State to pay for service interference costs associated with City or State street restoration. In this manner coordinated expenditures will accrue to the benefit of all parties and ensure that utilities are not responsible for incurring these costs. In the event that sufficient funding is not available to meet all applications and submittals made under this category, reimbursement may be limited to such an amount per applicant as ESD/EDC determines best meets the objectives of this plan within the established review process.

In cases where coordination between utilities, the City, and State is not possible, and such work is necessary for utility restoration of permanent service, funds will be made available directly to the utilities for required interference cost reimbursement. Sole, eligible service provider costs will be reimbursed up to 75% of actual, uncompensated, incurred and documented costs to the extent that funds are available. Uncompensated costs are those costs borne by the utility service provider after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses. Utilities may have incurred unreimbursed interference costs prior to the publication of this draft plan that were not coordinated with City-managed street restoration. Those costs are eligible for recovery under this category.

Work under this category is distinct from construction of carrier-neutral conduit described in Category 4.

The deadline for application and submittal of cost documentation under this category was December 31, 2007. This deadline may be extended if redevelopment efforts remain unresolved and if program funds are still available to address costs under this category.

Category 4 - Construction of Carrier Neutral Lateral Telecommunications Conduit - $~~50~~ 35 million

To enhance telecommunications diversity and competition in Lower Manhattan, up to $35 million will be allocated for the construction of carrier neutral lateral conduit. This conduit will provide housing for fiber optic or other telecommunication lines connecting the trunk lines serving main avenues with cross streets where customers for telecommunications services are located. This plan recognizes the need to facilitate the ability of telecommunications providers to connect fiber lines to their customers in a manner that minimizes the impact on traffic, pedestrians, and streets where the needed lines and buildings are located. The conduit will be available to all telecommunications services providers.

ESD/EDC will issue a Request for Proposals (RFP) following finalization of Categories 1 and 2 from companies that would be interested in constructing, owning, maintaining, and leasing the carrier-neutral lateral conduit. The company that is designated under this RFP for this task will be required to provide a scope of work to be included in the City-coordinated bidding described on page 5 above, and coordinated with City street restoration work. Eligible incurred costs to provide carrier neutral conduit at city-designated locations will be reimbursed at up to $35 million, subject to availability of funds.

In evaluating the responses to the RFP for carrier neutral lateral conduit, ESD/EDC will be guided by the following decision-making criteria, although not necessarily with equal weighting:

1. Managerial and financial capability of the applicant to perform the project.

2. The scope of the project the applicant is prepared to construct with the available funding.

3. The degree to which the applicant's proposed plan for operating and pricing the carrier neutral conduit would meet the goals of the project.

As noted under program eligibility, applicants for funds in this category need not qualify as regulated service providers that incurred un-reimbursed expenditures resulting from the September 11, 2001 attacks.

Category 5 - Construction of Redundant Fiber Connections to Critical Facilities - $5 million

The Initial Partial Action Plan allocated $20 million to this category.

The First Partial Action Plan Amendment, approved by HUD on 9/3/08, reallocated $12.5 million of funds initially allocated to this category to the newly created 130 Liberty Street

Deconstruction program. This first amendment reduced the allocation to $7.5 million. LMDC will seek to recover costs for the 130 Liberty Deconstruction Program from a number of third parties as discussed in Section III below. If funds are restored to this Partial Action Plan, they will be allocated to Categories 5 and 6 in accordance the priorities established in the Allocation of Program Funds section above.

The Second Partial Action Plan Amendment reallocated $2.5 million of funds initially allocated to this category to ESD Program Management, reducing the allocation from $7.5 million to $5 million.

As discussed in the Program Eligibility and Allocation of Program Funds sections above, if funds for other categories in this amended Partial Action Plan are not fully used, remaining funds may be used for both category 5 and 6.

To enhance public safety, up to $5 million will be allocated for the provision of fully redundant telecommunications services by delivery of fiber optic cable and supporting equipment, to critical business and government facilities that provide critical public services in Lower Manhattan.

Local government, in consultation with the affected utilities and ESD/EDC, will designate such critical facilities. ESD/EDC will issue a Request for Proposals (RFP) following finalization of this plan from companies that would be interested in constructing, owning, maintaining, and leasing the redundant fiber connections to the designated facilities. The company that is designated under this RFP for this task will be required to enter into the joint bidding relationship with the City described on page 5. Eligible incurred costs to provide such fiber cable connections to these facilities will be reimbursed at up to $7.5 million, subject to availability of funds.

In evaluating the responses to the RFP for construction of redundant fiber connections to critical facilities, ESD/EDC will use the following decision-making criteria, although not necessarily with equal weighting:

1. Managerial and financial capability of the applicant to perform the project

2. The scope of the project the applicant is prepared to construct with the available funding.

3. The degree to which the applicant's proposed plan for constructing, operating, and pricing the redundant fiber connections would meet the goals of the project

As noted under program eligibility, applicants for funds in this category need not qualify as regulated service providers that incurred unreimbursed expenditures resulting from the September 11, 2001 attacks.

Category 6 - Mandated Infrastructure Improvements - $0

In the Plan amendment approved by HUD on 9/3/08, $25 Million of funds initially allocated to this category were allocated to the newly created 130 Liberty Street Deconstruction program.

LMDC will seek to recover costs for the 130 Liberty Deconstruction Program from a number of third parties as discussed in section III below. If funds are restored to this Partial Action Plan, they will be allocated to Categories 5 and 6 in accordance the priorities established in the Allocation of Program Funds section above.

As discussed in the Program Eligibility and Allocation of Program Funds sections above, if funds for other categories in this amended Partial Action Plan are not fully used, remaining funds may be used for both category 5 and 6.

This category anticipates that utilities may face new regulatory mandates or be the subject of other government programs aimed at improving the security of vital utility services in Lower Manhattan. For this category only, the eligible area is defined as the area on and south of Houston Street. Eligible costs will be considered for upgrades to service delivery infrastructure to meet federal, state, and municipal regulatory mandates and participate in programs for system security and redundancy. ESD/EDC and DPS staff will review costs submitted for reimbursement under the mandated upgrade category to ensure that they directly reflect the cost of conformance to mandated directives. Eligible costs will be reimbursed up to 100% of actual incurred and documented costs. In the event that sufficient funding is not available to meet all applications and submittals made under this category, reimbursement may be limited to such amount per applicant as ESD/EDC determines best meets the objectives of this plan within the established review process.

The deadline for application and submittal of cost documentation under this category was initially established as December 31, 2004. This deadline will be extended if regulatory developments remain unresolved, and if program funds are still available to address costs under this category.

II. Program Administration

The Initial Partial Action Plan reserved $15.0 million for costs related to ESD/EDC administration of the program as well as LMDC's oversight. The Second Amendment to the Partial Action Plan allocated an additional $2.5 million for these costs, raising the total allocation to $17.5 million, approximately 2% of the total funding.

The Initial Plan reserved $3.5 million for program monitoring costs by LMDC and $7.5 million to be administered by ESD for program management costs. The Amended Plan allocates an additional $2.5 million for ESD program management, raising this allocation to $10 million. Program administration costs are anticipated for program publication, review of proposed infrastructure investments, environmental review clearance, financial evaluation and processing of funding requests, and auditing of disbursed funds. The additional $2.5 million will mostly be used for processing of funding requests and auditing of disbursed funds.

The Plan sets aside $4.0 million to upgrade the New York City MOSAICS system. Roadway construction to be performed with Partial Action Plan funds is administered via a City Department of Transportation permit and construction administration system known as MOSAICS. Upgrading the MOSAICS system will facilitate and improve permit administration, construction planning, and program audit functions for the level of work proposed by the Partial Action Plan.

Any unused funds from Program Administration may be reallocated to meet funding needs in other categories.

III. 130 Liberty Street Deconstruction

Partial Action Plan 7 has funded the acquisition of the property at 130 Liberty Street in August 2004 as well as subsequent costs to insure, manage, monitor, abate and deconstruct the building at the site. The costs associated with the abatement and deconstruction is currently estimated to exceed the amounts allocated in Partial Action Plan 7. In September 2008, the first amendment to this partial action plan allocated $37,500,000 to a new category entitled 130 Liberty Deconstruction Program In January 2010, a third amendment to this partial action plan allocated an additional $15,000,000 to this Program, increasing the total allocation to $52,500,000.

LMDC will seek to recover costs for the 130 Liberty Deconstruction Program from a number of third parties. Recovery will be sought from the general contractor based on all available contract claims, including indemnification and insurance. LMDC will also continue to seek contributions from the prior insurers of the building in accordance with the Deconstruction Funding and Settlement Agreement, a portion of which has already been received for designated costs incurred in 2007, 2008, and 2009. In addition, LMDC will seek to recover funds from Deutsche Bank related to the cost of abatement of hazardous material that existed in the building before September 11, 2001 and from the General Contractor engaged to deconstruct the building, Bovis Lend Lease, based on the terms and conditions of the Bovis Contracts, including indemnification and available insurance. Funds recovered may be reallocated to categories 4, 5 and 6 in accordance the priorities established in the Allocation of Program Funds section above.

IV. Public Comments and Responses for Initial Partial Action Plan

This section describes the comments received from the public following the release of this proposed Partial Action Plan. The following section details the comments and responses relating to the draft Partial Action Plan, after it was released for public comment from May 28, 2003 through June 12, 2003.

LMDC received 14 public comment submissions from the groups, businesses, elected officials, and individuals listed below relating to Partial Action Plan S-2 ($750 million).

The comments are summarized in bold, with responses following.

The Partial Action Plan for infrastructure repair and reimbursement for the cost of rebuilding infrastructure is supported and should be approved.

Eight comments expressed general support and agreement with the Partial Action Plan (Plan). Four comments, including one from Manhattan Borough President C. Virginia Fields, supported Consolidated Edison's eligibility for reimbursement for the rebuilding of infrastructure in Lower Manhattan. One comment expressed support for both Con Edison and Verizon, with respect to cost recovery and apportionment from the partial action plan. No further response is needed.

The Plan should not allow for reimbursement for expenditures that relate to "new" construction. Congressman James Walsh commented that "in order to be consistent with Congressional intent the 'Proposed Partial Action Plan for Utility Restoration and Infrastructure Rebuilding' should focus primarily on the restoration of the destroyed utility infrastructure. Expenditures related to new or enhanced facilities that have no relationship to the equipment damaged or destroyed in the attack should not be as high a priority when considering what activities to reimburse. "

The Plan identifies two objectives: 1) to protect businesses and residential customers from bearing the cost of the infrastructure rebuilding; and 2) to enhance the revitalization and redevelopment of Lower Manhattan as a world-class commercial and residential community by encouraging investment in energy and telecommunications infrastructure. Some investment in new infrastructure may benefit the customers of Lower Manhattan and is allowed for by this Plan. The Plan ranks service restoration and the rebuilding of damaged utility infrastructure as the highest priority and has structured the use of funds to address this first in recognition of Congressional intent for the appropriation.

Emergency services and temporary restoration, permanent restoration and service interference should be prime priorities of the plan.

The Plan has been modified to more clearly rank these priorities in order. Reimbursement for uncompensated losses for emergency and temporary restoration of service is the highest priority, followed by permanent restoration of infrastructure and then service interference.

The Plan should lower the priority for reimbursement of facilities that upgrade in a significant manner the equipment damaged in the attack.

Some of the equipment and facilities damaged by the attacks were technologically outdated. Customers are better served if the outdated equipment and infrastructure is upgraded when it is replaced. The NYS Department of Public Service will work in partnership with Empire State Development (ESD) to evaluate all expenditures submitted by the utilities under this Plan, and will consider the necessary and appropriate contributions of such upgrades. To the extent that upgrades fulfill the permanent restoration of infrastructure, they fall within the second highest priority of the Plan, and are limited to reimbursements of not more than 75% of otherwise uncovered costs.

The allocation of program funds is confusing and should clearly state that Tier 1 and Tier 2, category 2 – permanent restoration, are the main priorities of the plan.

Language clarifying the prioritization of funding categories has been incorporated, as noted above. The Plan has been modified to eliminate the use of "Tiers" and allocates funds to six "Categories" of eligible activity, organized in priority order.

Permanent restoration expenditures for energy facilities should be 100 percent reimbursable.

As estimates of uninsured utility damages exceed the $750 million appropriated by Congress, it will not be possible to reimburse 100% of expenditures for permanent restoration. It must also be recognized that a percentage of expenditures for permanent restoration may not qualify for reimbursement from the authorized funding, in that certain upgrades and improvements of the infrastructure and related expenses may be recovered through other sources, such as extant utility rates and litigation.

The $750 million grant is a vehicle to reward the under-insured stockholders of the utilities.

The primary objectives of the plan are (1) to protect business and residential customers from bearing the cost of the infrastructure rebuilding; and (2) to enhance the revitalization and redevelopment of Lower Manhattan as a world-class commercial and residential community by encouraging investment in energy and telecommunications infrastructure. The utilities suffered extensive damages, much of that uninsured. The utilities also responded rapidly to restore service, and have carried the costs of damage and service restoration. Congress appropriated this fund in order to protect the ratepayers (business and residential customers alike) from bearing the costs of this damage and recovery in the form of higher utility rates. In addition, in order to maximize Lower Manhattan's ability to retain and attract businesses, utility rates must remain competitive with other major cities. The estimates of uninsured utility damages far exceed the funding appropriated by Congress for this purpose. No "reward" or windfall will be realized by any of the affected utilities.

The definition of "substantial amendment" should be modified to substitute "category" for "tier," concerning the reallocation of funds.

The reference to "tier" has been removed and a finite dollar threshold from the definition of "substantial amendment" has also been eliminated.

Please explain the New York City MOSAICS system and describe how its upgrade constitutes assistance for properties damaged by or economic revitalization directly related to the terrorist attacks.

The NYC Department of Transportation (DOT) manages the City streets and sidewalks. MOSAICS is an information management application designed to track and print permits that allow private and public entities to use the streets and sidewalks for various purposes. The attacks on the WTC created extensive and unanticipated demands to permit emergency and restoration projects. The improved MOSAICS system will facilitate the permitting process for utility infrastructure restoration and ensure the rebuilding of Lower Manhattan in the least disruptive way possible. The revised Plan has adjusted the allocation for the MOSAICS system to $4.0 million, and restored $3.5 million to rebuilding activities.

Information supplied to LMDC under the Partial Action Plan should be afforded all lawful exemptions from public disclosure under the state Freedom of Information Law (FOIL) (i.e., pursuant to Public Officers Law Sec.87 (2)(d) and (I) and Sec.89(5)).

Applicants to the fund may request protection for competitive and trade sensitive information under the state Freedom of Information Law (FOIL) as cited. Competitive information is also protected by federal law under 5 US Code 552(b)(4), and in federal regulation 24CFR15.3(a)(4), provided that relevant pages are marked "confidential."

Multiple comments address the process of coordinating utility work with City street work and the ESD/EDC role in coordinating that work. Comments included the following points:

Additional clarification should be provided to the language addressing coordination of street interference with the city to provide that work initiated prior to publication of the Draft Action Plan does not require such coordination in order to be eligible for 100 percent reimbursement.

Each participating carrier should be permitted to include construction of its own facilities on a non-discriminatory basis with reasonable, cost-based pricing (to the extent not 100% reimbursed pursuant to the plan).

Utilities and LMDC must create clear guidelines for coordination, and those guidelines should not create burdensome obligations that make it impossible to timely serve customers or place monopoly control over facilities construction in the hands of a single entity.

Participatory utilities should be consulted in choosing contractors in order to ensure their requirements for vendor certification can be addressed.

An adequate joint construction notification system should be implemented to allow all interested utilities to participate in a build.

Coordination guidelines should address a utility's right to own and control access to cable installed on its behalf.

Prompt, realistic build time frames must be established.

It should be clear that the requirement for coordination applies solely where proposed construction will involve disruption of public streets and rights-of-way, and not to installation of facilities and infrastructure that are not disruptive or occur on private property.

LMDC must work closely with all utilities and building owners to ensure timely and cost effective access to buildings.

These comments pertain to the program coordination requirements of the Plan and the ESD/EDC desire to coordinate the efforts of federal and state grant programs to the fullest extent possible. As called for in the Plan, a joint plan will be developed with ESD/EDC and affected utilities to provide for the coordination of work as requested. However, for work that is completed before the plan was published, as well as for subsequent, non-coordinated work, reimbursement will be limited to not more than 75% of unreimbursed expenditures. Only coordinated work will be eligible for up to 100% reimbursement. Utilities are able to complete any necessary work for restoration of permanent infrastructure. This sole provider cost will be reimbursed at up to 75% of actual, unreimbursed, and documented costs.

Utilities receiving grants under this program should be required to provide utility service at a reduced rate to Lower Manhattan small businesses for the next three to five years.

Grants provided to utilities through the Partial Action Plan are intended to minimize the impact of rate increases that could be authorized to offset unreimbursed infrastructure losses. In this way, rate impact is being addressed. The grants to be provided to eligible utilities do not represent or constitute a windfall for utilities.

The partial action plan should improve wireless connectivity in Lower Manhattan by allocating funding in the amount of $10 million for the creation of a Wireless Redundancy System.

Lower Manhattan is already well served by several competitive wireless service providers and wireless technologies. Because the redundant infrastructure referenced in the comment currently exists as a result of the demands of the marketplace, allocating partial action plan funds would serve to create a shortfall for utility reimbursement.

Comments to the Draft Partial Action Plan were received from:

Asian American Business Development Center
Association for a Better New York (ABNY)
AT&T
Eddie Batiz – Remy Lounge
Albert K. Butzel
Capsouto Freres Restaurant
Consolidated Edison
Council on the Environment of New York City
C. Virginia Fields, Manhattan Borough President
From the Ground Up
Lower Manhattan Cultural Council
Lower Manhattan Telecommunications Users Group
New York Building Congress (NYBC)
The Battery Conservancy
Verizon
James T. Walsh, Member of Congress, 25th District of New York