

LICENSE AGREEMENT

This License Agreement made this 24th day of Sept. 2002 by and between the CITY OF NEW YORK (hereinafter called "the City"/Licensee), acting by and through the Department of Environmental Protection of the City of New York (hereinafter called "DEP"), with an office at 59-17 Junction Boulevard, Corona, New York 11368-5107 and BMS Realty Associates Inc. ("Landowner/Licensor") the owner of the premises at 62 WILLIAM STREET (the "Premises").

WHEREAS, the facades, roofs and setbacks ("exterior areas") of many structures in close proximity to the site of the former World Trade Center have been found to contain debris, refuse and other deposits ("the foreign material") of unknown origin;

WHEREAS, the owners of said structures are desirous of having the foreign material removed;

WHEREAS, the City believes that it is in the interest of the public to undertake a clean up of these exterior areas;

WHEREAS, the City's willingness to undertake such a cleanup should not in any way be construed as an acknowledgment or admission that the City is any way responsible for any condition, environmental or otherwise, that may exist in or on the exterior areas or that the foreign material is a risk to the public health or safety;

NOW THEREFORE, it is hereby agreed by and between the parties to this agreement, for and in consideration of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged,

1. **Permission to Perform Cleaning Work.** Subject to the terms and conditions hereof, Licensor hereby grants permission to Licensee and its authorized contractor(s) to perform the cleaning work on the exterior areas of the structure(s) located on the Premises, as described in the Scope of Work attached hereto as Exhibit A and made a part hereof (the "Cleaning Work").

2. **Grant of Access.** Subject to the terms and conditions hereof, Licensee and its agents, contractors and employees shall have the right, at all times while this License Agreement is in effect, to enter in and on the Premises, and to cross the Premises, with personnel, material and equipment, for the purpose of performing the Cleaning Work. It is expressly understood that the right granted under this Section 2 includes:

(a) the right to access all portions of the Premises deemed necessary by Licensee or its contractor(s) in order to properly perform the Cleaning Work, including (without limitation) roofs, parapets, window ledges, and other building exterior surfaces; and

(b) the right to temporarily occupy portions of the ground outside of the building located on the Premises, with personnel, material and equipment, in order to perform the Cleaning Work; and

(c) the right to erect, maintain, and store temporary scaffolding on the Premises, and to utilize such scaffolding for the purpose of performing the Cleaning Work.

3. **Limitations And Conditions:**

- a) In no event shall the Licensee, its agents, contractors, or subcontractors enter the Licensor's property for the purposes of performing the Cleaning Work other than between the hours of 8:00 a.m. and 8:00 p.m.
- b) Licensee shall provide the Licensor with written notification of its intention to begin the Cleaning Work at least two (2) days prior to the commencement of such Work.
- c) Licensee shall pay the entire cost of all work, labor, and material in connection with the Cleaning Work undertaken by it hereunder except that the Licensor shall supply and pay for all power and water usage in connection with the Cleaning Work.
- d) Licensee, its agents, contractors, and employees, shall perform all Cleaning Work promptly and in a workmanlike manner with a minimum of disturbances to the Licensor's property.
- e) Licensee shall maintain such flags, lights, barricades and enclosures as required for the safety of persons, property and traffic flow.
- f) All Cleaning Work shall be performed by qualified contractors in accordance with applicable federal, state and local rules and regulations;
- g) Any contractor or subcontractors performing the Cleaning Work on behalf of the Licensee shall obtain, prior to the commencement of any Cleaning Work, insurance in the amounts and types as set forth herein in Exhibit B;
- h) All City employees, and any contractor or subcontractor performing any activities on the City's behalf, shall, at all times, wear proper identification which, at a minimum shall include, an identification card with the name and photograph of the person.

4. **Reimbursement.** Licensor shall reimburse Licensee for the removal of the foreign material provided for in this license from any compensation it receives from any source for the

cleaning of debris accumulations from the exterior surfaces of the structure(s) located on the Premises. Such sources shall include, but are not limited to, the Small Business Administration, private insurance, or any other local, state or federal assistance program. Licensor shall make claim for any applicable insurance coverage for these premises and shall report to Licensee any insurance settlements or other source of funding for the Cleaning Work that has been performed at Licensee's expense.

5. **Termination.** This license shall be terminable by the Licensor or Licensee on ten days written notice to the address set forth below by fax or certified mail. In the event of a default by either party, the license may be terminated immediately, without any prior notice.

6. **Waiver of Claims.** Licensor agrees that no claims or cause of action for damages shall accrue by reason of revocation or termination of this License.

7. **Term.** This license shall commence as of the latest date appearing at the end of the signature page and remain effect for a period of ninety (90) days unless or until terminated or revoked as hereinabove provided.

8. **Cleaning Work Not An Admission of Liability.** It is expressly understood and agreed by Licensor and Licensee that Licensee's performance of the Cleaning Work hereunder is not, and shall not be construed as,

(I) an admission or agreement by the Licensee that it is liable for the deposit of any dust, debris or other material in or on the Premises as a result of the events of September 11, 2001, at the World Trade Center complex, or the subsequent debris removal activity related thereto; or

(II) an admission or agreement by the Licensee that it is liable for any condition, environmental or otherwise, that may exist in or on the Premises as of the date hereof.

9. **Landmarks.** If the Premises are a designated landmark, Landowner gives its permission for DEP to file the "Application Form for Work On Designated Properties" with the New York City Landmarks Preservation Commission on Landowner's behalf.

10. **Notices:** Notices and correspondence regarding this License shall be directed by Certified Mail, Return Receipt Requested to the Licensor, at the following address:

B.M.S. REALTY ASSOCIATES INC.
P.O. BOX 110158
BROOKLYN, N.Y. 11211 (718) 302-3643

and notices to the Licensee shall be addressed to R. Radhakrishnan, P.E., NYCDEP-ACP, 59-17 Junction Boulevard, 8th Floor, Corona, NY 11368-5643, with a copy to General Counsel, NYCDEP, 59-17 Junction Boulevard, 19th floor, Corona, New York 11368-5643.

IN WITNESS WHEREOF, the parties have caused this License Agreement to be executed and acknowledged on the day and year which first appears above.

Dated: 9/17/02

Licensors
By: *Barry Frankel*

Dated: 9/24/02

Assistant Commissioner, DEP
Licensee
By: *Michael A. Green*

Approved as to Form

Acting Corporation Counsel

DATED: _____

STATE OF NEW YORK)
COUNTY OF Kings)s.:
)

On this 17 day of SEP 2002, before me personally came the individual described in and who executed the foregoing instrument and acknowledged to me that he/she resides at _____ and that he/she executed the foregoing instrument as the owner/licensor of the property.

NOTARY PUBLIC
STATE OF NEW YORK

SOLOMON ITZKOWITZ
NOTARY PUBLIC, State of New York
No. 011T4795441
Qualified in Kings County
Commission Expires July 30, 2006

STATE OF NEW YORK)
)s.:
COUNTY OF QUEENS)

On this 24th day of September 2002, before me personally came Michael Gilseman and acknowledged to me that he/~~she~~ is the ~~Acting~~ ^{Assistant} Commissioner of the New York City Department of Environmental Protection, and that he/~~she~~ authorized to executed the foregoing instrument and that he/she did so on behalf of the City of New York pursuant to authority of law duly delegated.

Francis S. Schiano
NOTARY PUBLIC
STATE OF NEW YORK

FRANCIS S. SCHIANO
NOTARY PUBLIC, State of New York
No. 02SC4741070
Qualified in Richmond County
Commission Expires October 31, 2005

EXHIBIT B

SUPPLY and SERVICE CONTRACT
GENERAL CONDITIONS
SCHEDULE A

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<u>Reference</u>	<u>Item</u>	<u>Requirements</u>
Section 28 of Information for Bidders	Bid Deposit or Bid Bond	<u>N/AP</u> % of Bid <u>N/AP</u> % of Bid
Article 4 of Agreement	Period of Performance	<u>120</u> Consecutive Calendar Days
Article 5b of Agreement	Partial Payment	<u> X </u> will be allowed <u> </u> will not be allowed
Article 6.1 of Agreement	Performance Bond Payment Bond (Completion/Labor & Material)	<u>N/AP</u> % of Bid <u>N/AP</u> % of Bid
Article 6.3 of Agreement	Liquidated Damages	\$ <u>N/A</u>
Article 6.4 of Agreement	Maintenance and Guaranty Security	<u>N/A</u> % of Contract Price
Article 6.4 of Agreement	Guaranty Period	<u>N/A</u> year(s)
Article 6.5 of Agreement	Retained Percentage	<u>10</u> % of Voucher
Article 12.8 of Agreement	Subcontracting	Not to exceed <u>45</u> % of Bid

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Insurance indicated by (X) will be required under this contract. Insurance certificates, policies, and endorsements must be sent to the New York City Department of Environmental Protection, Agency Chief Contracting Officer, ATTN: Contract Management Office (INSURANCE), 17th Floor, 59-17 Junction Boulevard, Corona, New York 11368.

Article 6 of Agreement	Insurance
(x) Workers Compensation: Section II.B (x) Employers Liability: Section II.D () Jones Act:* Section II.E () U.S. Harbor Workers & Longshoremen's Compensation Act:* Section II.G * As respects use of tugs, barges or other marine operations under this contract.	Statutory per New York State Law without regard to jurisdiction \$ <u>1,000,000</u> each accident
(X) Commercial General Liability CG 00 01 (ed.10/93) or equivalent. Combined Single Limit-Bodily Injury and Property Damage: Section II.A	\$ <u>5,000,000</u> per occurrence: \$ <u>5,000,000</u> products/completed operations aggregate \$ <u>5,000,000</u> personal injury \$ <u>50,000,000</u> general aggregate \$ <u>25,000</u> per claim maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE
☒ Others to be added as additional insureds: Additional insured status using ISO endorsement CG 20 10. Section II.A.3 B.M.S. REALTY ASSOCIATES INC. P.O. BOX 110158 BROOKLYN, N.Y. 11211 <i>62 William Street, N.Y.C.</i>	Named Additional Insureds <u>Owners of Buildings on Which Work Is To Be Done</u> _____ _____ _____
(x) <u>Business Auto Coverage</u>: CA 00 01 (ed. 06/92) or equivalent Combined Single Limit - Bodily Injury and Property Damage The following coverage must be provided: () Business Auto Coverage Form: Section II.I	\$ <u>1,000,000</u> Each Occurrence (x) Owned (x) Hired (x) Non-Owned

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() Marine Protection and Indemnity, SP-23 or equivalent: * # _____ Section _____ II.F * As respects use of tugs, barges or other marine operations under this contract. # City as insured by endorsement to each relevant policy.	\$ _____ per occurrence \$ _____ aggregate per year \$ _____ max deductible
() Collision Liability/Towers Liability: _____ Section _____ II.C [Endorsed to cover dredges and dredging operations.]	\$ _____ per occurrence \$ _____ aggregate per year \$ _____ max deductible Collision Clauses Lines 158-184 inclusive as respects tugs: Collision Towers Liability Clauses 78-111 inclusive American Institute Tug Form - 2/1/76
() Ship Repairers Liability: _____ Section _____ II.H () Water Quality Syndicate	\$ _____ American Institute Clauses \$ _____
() Builders Risk: _____ Section _____ II.J	All-Risk/Completed Value \$ _____ % of Total contract amount \$ _____ % of contract store off site \$ _____ % of contract in transit/anyone storage \$ _____ % Property of City and others
() Garage Policy CA.00.05 01/87 Section II & III ¹ (See Form 25) II: Auto & General Liability III: Garage Keeper's Liability	\$ _____ per occurrence \$ _____ per aggregate \$ _____ per location \$ _____ per vehicle maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE

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¹Evidence of insurance as described herein shall be provided by the insurer or duly authorized agent of the garage providing maintenance on the vehicle(s) provided to the Department's Contract Management Office. It is the Contractor's responsibility to insure compliance with this provision by the garage.

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In addition, if indicated by an (X), the following hazards must be covered:

☒ Environmental Impairment Liability insurance Asbestos Liability [Zurich U-ASL-103B (CW)(1-96) or Equivalent] This insurance shall be provided in the name of the contractor, and each subcontractor, performing any operations involving the removal of asbestos materials.	\$ <u>2,000,000</u> general aggregate (excl products) \$ <u>1,000,000</u> products/completed operations aggregate \$ <u>1,000,000</u> each occurrence \$ <u>25,000</u> claim maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE
☐ Contractor's Environmental Impairment Liability Insurance [Zurich U-EIL-102-A(CW)(6-92) or Equivalent] This insurance shall be provided in the name of the contractor, and each subcontractor, performing any operations involving the disruption, removal, disposal, or handling of lead or other toxic and/or hazardous materials.	\$ _____ general aggregate (excl products) \$ _____ products/completed operations aggregate \$ _____ each occurrence \$ _____ claim maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE

) Other _____

