

Gilsenan, Michael

From: Pecunies, Russ
Sent: Wednesday, April 24, 2002 2:33 PM
To: Hoffer, Mark; Gilsenan, Michael; Radhakrishnan, Krish; 'lyee@oem.nyc.gov'; 'wlopez@health.nyc.gov'; 'asumowicz@cityhall.nyc.gov'; 'lkahn@law.nyc.gov'; 'grubin@law.nyc.gov'; 'slevi@law.nyc.gov'; 'patricia.trask@fema.gov'; 'adrian.sevier@fema.gov'; 'jean.cox@semo.state.ny.us'
Subject: Downtown Building Cleaning

I have attached a revised draft of the License Agreement. Please contact me with any comments as soon as possible.

Also, it has been agreed that DEP will provide a side letter to New York State satisfying the requirement that the State be indemnified. Please provide any suggestions regarding the form and wording of such a letter.

Finally, the three contractors have been contacted and advised that we wish to change the insurance requirements. They have contacted their brokers and are awaiting word.



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LICENSE AGREEMENT

This License Agreement made this _____ day of _____ 2002 by and between the CITY OF NEW YORK (hereinafter called "the City"/Licensee), acting by and through the 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 _____ ("Landowner/Licensor"), the owner of the premises at _____ ("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 surfaces and roofs 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:

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(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, subcontractors, and assigns, shall perform all Cleaning Work promptly and in a workmanlike manner with a minimum of disturbances to the Licensor's property.
- e) Licensee shall be 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;

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- g) Any contractor or subcontractors performing the Activities on behalf of the Licensee shall obtain, prior to the commencement of any Activities, 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 collapse of the North and South Towers of the World Trade Center on September 11, 2001; or

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

and notices to the Licensee shall be addressed to :

with a copy to General Counsel, New York City Department of Environmental Protection, 59-17 Junction Boulevard, 19th floor, Corona, New York 11368-5643.

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

Licensor

By: _____

Dated: _____

Licensee

By: _____

Dated: _____

Approved as to Form

Acting Corporation Counsel

DATED: _____

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

On this day of 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

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

On this day of 2002, before me personally came
_____ and acknowledged to me that he/she is the First
Deputy 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.

NOTARY PUBLIC
STATE OF NEW YORK

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