

World Trade Center

59-17 Junction Boulevard, Flushing, N.Y. 11373-5108



The City of New York
Department of Environmental Protection

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Commissioner

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MEMORANDUM

TO: Russ Pecunies

FROM: Mark D. Hoffer *MHP*

DATE: 3/27/02

RE: Cleaning of Building Facades and Roofs, Downtown Manhattan

As we discussed, DEP (Bob Avaltroni's Bureau) is developing a program to clean the roofs, facades and other exterior surfaces of certain buildings in downtown Manhattan, using federal FEMA funds. I'd like you to assist on the legal aspects of this program.

Enclosed is a draft letter which Krish dropped off with me this morning, intended to be sent to the relevant building owners. Attached to the letter is a form of License Agreement (presumably based on a draft developed by Barry Schwartz), to secure access to the subject properties.

As you can see, I've marked the documents up quite a bit.

I think there are a number of open issues, as follows (and possibly others besides):

(a) Funding: Is the federal funding in place? Is this documented in some fashion? Is it clear that we can make payments to contractors as and when needed? How does this happen?

Are we proposing to start any work before federal funding is in place? How will it be paid for?

(b) Properties: Are we doing a select universe? if so, how was it developed? (other property owners may ask)

(c) Contractors: Are we going to bid the work or pursue an emergency contractor? Do we know that the scope of work (see below) is "biddable"? (that is, the there are contractors who are willing to do this?)



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(d) Scope of Work: A detailed scope of work needs to be developed now, so that we spell out to property owners exactly what we will do (I want to cut off any arguments about "promises" being made to do other work besides).

The scope should be developed now and incorporated by reference into the letter and into the License Agreement.

(e) Consent to Work: The License Agreement should document consent to the work being performed, as well as granting access to the property.

(f) Disclaimers/Liability: We need to be careful that in offering to clean building exteriors, we are not making any environmental or health representations that we are not prepared to stand by. This will be problematical in that building owners are apt to ask for representations or other assurances that the work was done properly and that the cleaned areas are free of any contaminants of concern.

I think the best way to proceed is as follows:

1. Take a look at my mark-up and edit as you see fit.
2. Call Heidi Rubenstein at Environmental Law. Heidi is working on downtown air issues for Susan Kath and presumably would be the Law Department attorney who can assist us on the cleaning program. If she's not the right person, ask her who is¹.
3. Share and discuss the drafts with Heidi and then schedule a meeting with Krish and his staff and with Heidi to refine the draft documents and identify any issues that need higher level sign-off at DEP. Advise me of same.

Please keep me advised of where this stands. Thanks for your help.

MDH:mdh
dtair.wpd
Enc.

cc: R. Levine

¹ I also note that the draft License Agreement calls for approval as to form by the Law Department. Heidi can help on this aspect as well.

1-A

In this regard, DEP is initiating a program (Cleaning Program), with financial assistance from the Federal Emergency Management Agency (FEMA), to clean the exteriors of certain buildings in the downtown Manhattan area.

1-B

Based on visual surveys and analyses of other properties in the area, we are assuming that the dust accumulations noted on the exterior of the Building include some amount of asbestos-containing material (ACM). DEP would like to include the Building in the Cleaning Program, and clean the facades, roofs and other exterior surfaces so as to remove such accumulations. The scope of work for this cleaning is attached to this letter as Exhibit A. The work would be performed by NYS DOL licensed asbestos contractors with DEP and NYSDOL certified workers. The fees and expenses of the asbestos contractor in performing the work will be paid for by DEP.

To ensure that the cleaning is performed properly, the work will be monitored by DEP personnel and an independent third-party air monitoring firm will also be engaged to take air samples at designated points around the perimeter of the working area. In addition, the federal Occupational Safety and Health Administration (OSHA) will provide oversight for worker safety. The fees and expenses of DEP personnel in monitoring the work, and the fees and expenses of the third-party air monitoring firm in taking and analyzing air samples will also be paid for by DEP.

In order to proceed with this cleaning, we will need your cooperation and assistance in (x) arranging a schedule to have the work performed, (y) designating a point of contact at the Building to address any issues that may arise during the course of the work, and (z) securing legal consent from the owner of the Building, so that DEP and contractor personnel have appropriate access to the property.

We request that you call _____ at DEP (Telephone: _____) by not later than _____, to arrange for a work schedule and to designate a liaison, who should be an individual at the Building available between the hours of 8:00 AM and 6:00 PM, seven days a week. The cleaning work will require a source of electrical power and water at the Building, and may entail the erection of temporary scaffolding so that workers can access exterior walls. Please be prepared to discuss these items and any other considerations you are aware of applicable to the Building (e.g., landmark status) which might affect the cleaning.

We also request that you review the form of License Agreement attached to this letter as Exhibit B. The License Agreement is intended to document permission from the Building owner for the work to be performed, and to grant appropriate access to DEP and contractor personnel. Please arrange for this License Agreement to be signed by an authorized representative of the Building owner and returned to _____ at DEP, 59-17 Junction Boulevard, __ Floor, Corona, NY 11368 (Telephone: _____) by not later than _____.

_____.

If you have any questions concerning the foregoing, please do not hesitate to contact Mr. [Ms.] _____ at the above-specified number. We appreciate your courtesy and attention to this matter.

~~Very truly yours,~~