

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



The City of New York
Department of Environmental Protection

Joel A. Miele Sr., P.E.
Commissioner

Mark D. Hoffer
General Counsel

Bureau of Legal Affairs

Tel (718) 595-6555
 Fax (718) 595-6543
www.ci.nyc.ny.us/dep

MEMORANDUM

TO: Russ Pecunies

FROM: Mark D. Hoffer *MSP*

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 ed 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 besides):

a) Funding: Is the federal funding in place? Is this documented in writing? 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, are there contractors who are willing to do this?)

ⓕ WORLD TRADE CENTER-
 JOINT TASK FORCE ON A.I.R. QUALITY



www.ci.nyc.ny.us/dep

(718) DEP-HELP

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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):

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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?)



(718) DEP-HELP

(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,~~

X-1-A

1. Permission to Performing 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 men, 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 men, 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.

X-1-B

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

(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.

Date

Building Owner Name

Address

City, State, Zip

DRAFT

Subject: Building Address, AKA

Dear Sir/Madam:

on
Various

The New York City Department of Environmental Protection in cooperation with the United States Environmental Protection Agency (USEPA) and the New York State Department of Labor (NYSDOL) has performed a series of exterior building surveys at all buildings in the vicinity of the World Trade Center. The surveys included the examination of building exteriors including building roofs, facades, setbacks, and other exterior surfaces. These surveys identified locations where debris from the collapse of the WTC was still visible. Our records indicate that visible dust accumulations were observed at the above referenced building.

In our previous correspondence, the Department requested an assessment and appropriate clean up of visible dust accumulations. The Department has either not received information regarding your actions to address the dust accumulations or has re-inspected your building and visible dust accumulations were still present.

Previous tests have indicated that there is no evidence of significant long-term health risks to residents and office workers in lower Manhattan. However, the USEPA and DEP are continuing their ongoing efforts to improve air quality in lower Manhattan. ~~City, state, and federal agencies have taken actions to ensure that visible dust accumulations are properly removed from building exteriors. FEMA has provided the necessary funds for the clean up of building exteriors.~~

1-A

~~Based on the visual surveys and the most stringent assessment and evaluation, this material will be assumed to be asbestos containing material (ACM). NYS DOL licensed asbestos contractors with DEP and NYSDOL certified workers will be scheduled to clean up building roofs, setbacks, and/or building facades. The scope of work was developed by the DEP, and will be monitored by the DEP and an independent third party air monitoring firm. These activities consist of the installation of appropriate isolation barriers, collection of debris and wet cleaning/HEPA vacuuming until the surfaces are clean of visible debris.~~

1-B

Once again, the DEP will provide oversight of all the clean up activities and OSHA will provide oversight for worker safety issues. A licensed third party air-monitoring firm will perform air monitoring at designated areas at the perimeter of the work area. Your cooperation and assistance are needed.

Enclosed you will find a copy of a consent form, it must be completed, signed, and returned to the DEP by **Date**. Please include the name and telephone number of a person who will be available from 8:00 a.m. to 6:00 p.m. seven days per week. Also include any specific building considerations, such as landmark

status, that may assist in the effective and efficient cleaning of the building. The contractors will need access to the roof, electric power for equipment and a water source. Building facades will be cleaned if necessary using hanging scaffolds. You will be informed of the start date and time as soon as it is available.

If you have any questions, please do not hesitate to call the DEP at (718) 595-3682.

Sincerely,

Name
Title

ED-11

March 13, 2002

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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/Licenser"), 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 but, in many cases, do not have the funds or means to do so;

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

WHEREAS, the City's willingness to ^{undertake such a clean up} ~~assist in the Activities to be undertaken~~ 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 an in consideration of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged,

X-1-A

1. **Grant:** ~~Licensee and its agents, contractors or subcontractors shall have the right, from time to time, to enter on and cross Licenser's property, with men, material, and equipment, for the purpose of gaining access to the exterior areas of the building or structure in connection with the Activities to be undertaken~~
2. **Use of Premises:**
 - a) ~~Licensee and its agents, contractors, or subcontractors, shall have~~

March 13, 2002

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~~the right, from time to time, to temporarily occupy the exterior structures of the Licensor's property and those area(s) adjacent thereto as may be necessary to access the exterior, with men, material, and equipment in order to perform the Activities.~~

- b) Licensee and its agents, contractors, or subcontractors, shall have the right to perform all work on the exterior areas as may, in the opinion of the Licensee, be deemed necessary in order to fully complete the Activities.

3. Limitations or conditions:

- Cleaning Work
- a) In no event shall the Licensee, its agents, contractors, or subcontractors enter the Licensor's property for the purposes of performing work other than during weekdays beginning at 8:00 a.m. and ending at 4:00 p.m. and excluding Saturdays, Sundays, and Holidays.[do you foresee the need to do work at other times or during emergencies?]
- b) Licensee shall provide the Licensor with written notification of its intention to begin the clean-up at least five (5) 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 Activities undertaken by them except that the Licensor shall supply and pay for all power and water usage in connection with the Activities. it hereunder
- d) Licensee, its agents, subcontractors, and assigns, shall perform all Activities 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.
- Cleaning Work
- f) All activities shall be performed by qualified contractors in accordance with applicable federal, state and local rules and regulations;

March 13, 2002

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- g) The Licensee is self-insured. 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 ~~A~~, **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, address, telephone number and photograph of the person and such other information as may be agreed upon by the Licensee and Licensor.

4. **Indemnification:** Licensee, as indemnitor, agrees to indemnify and hold harmless the Licensor, as indemnitee, from and against any claims or causes of action for personal injury or property damage arising out of or resulting from the Licensee's use, occupation, or possession of the licensed premises, except that the indemnitor shall not be responsible for the pre-existing condition of the licensed premises or for that portion of injury or damage which may be caused by or result from the negligent or willful conduct of the indemnitee or its agents or employees.

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:** In the event of termination or revocation, the Licensee and Licensor agree that no claims or cause of action for damages of any nature whatsoever shall accrue by reason of such revocation or termination.

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.

X-1-B

98. **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 :

March 13, 2002

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

IN WITNESS WHEREOF, the parties have caused this Licensee 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: _____

March 13, 2002

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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

March 13, 2002

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INSERT APPLICABLE INSURANCE PROVISIONS