

DRAFT-6/19/02

MEMORANDUM OF UNDERSTANDING , dated as of _____, by and between THE NEW YORK CITY DEPARTMENT OF BUSINESS SERVICES (“DBS”), an executive agency of the City of New York (the “City”), having its principal place of business at 110 William Street, 3rd Floor, New York, New York 10038, and THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION (“DEP”), an executive agency of the City, having its principal place of business at 59-17 Junction Boulevard, Corona, New York 11368.

Recitals

WHEREAS, pursuant to Section 1301 of the New York City Charter (the “City Charter”), the Commissioner of DBS is, among other things, authorized and empowered to study, organize, promote, coordinate and carry out within or without the City, activities, projects and programs designed to encourage, stimulate and foster the well-being, development, growth and expansion of business, industry and commerce in the City, and the enhancement and protection of the economic life of the City; and

WHEREAS, pursuant to said Section 1301, the Commissioner of DBS is further authorized and empowered to serve as liaison for the City with local development corporations, other not-for-profit corporations and all other entities involved in economic development within the City; and

WHEREAS, the New York City Economic Development Corporation (“EDC”), is a corporation organized under Section 1411 of the Not for Profit Corporation Law, and has as its purpose [quote from certificate of incorporation of EDC]; and

WHEREAS, the City, acting by and through DBS, and EDC, have entered into an Agreement, dated as of ____ (the “EDC Agreement”), pursuant to which EDC performs certain services for the City to help retain existing businesses, attract new businesses, and otherwise promote the economic development of the City; and

WHEREAS, pursuant to Section 1403 of the City Charter, the Commissioner of DEP is, among other things, authorized and empowered to have charge and control of and be responsible for all those functions and operations of the City relating to the prevention of air, water and noise pollution, and to respond to releases or threatened releases of hazardous substances; and

WHEREAS, pursuant to said Section 1403, the Commissioner of DEP is further authorized and empowered to regulate and control the emission into the open air of harmful or objectionable substances and to enforce all laws, rules and regulations with respect to such emissions; and

WHEREAS, the terrorist attack on, and subsequent collapse of, Towers 1 and 2 of the

World Trade Center (“WTC”) on September 11, 2001, have had a profound impact on the City generally, and on the business and residential communities of lower Manhattan in particular; and

WHEREAS, lower Manhattan is the financial center of the nation, and the events of September 11, 2001 have impacted many of the major financial, investment and banking institutions located in the area, including loss of life, loss of workplace, and displacement of employees and operations; and

WHEREAS, such impacts have adversely affected the City’s economy including reductions in tax revenue, loss of economic output, and loss of jobs either temporarily or permanently to other jurisdictions; and

WHEREAS, lower Manhattan is also home to a developing 24-hour residential community, and the events of September 11, 2001 have impacted area residents, including damage to and displacement from apartments and homes, closure of area schools, and restrictions on vehicular and pedestrian traffic; and

WHEREAS, such impacts have adversely affected the City’s economy including a nearly 40% decline in residential occupancy rates in lower Manhattan, with resulting loss of revenue to building owners, area stores, and cultural institutions; and

WHEREAS, an area of concern to both the business and residential communities in lower Manhattan is the quality of the environment, including air quality, in the aftermath of September 11; and

WHEREAS, the City is addressing these concerns by, among other things, cooperating with the United States Environmental Protection Agency (“USEPA”) and the Federal Emergency Management Administration (“FEMA”) on programs to clean building exteriors and interiors of residential apartments of WTC-related dust and debris; and

WHEREAS, communicating the progress of these efforts, and of other governmental efforts to protect and preserve the quality of the environment in lower Manhattan is critical to maintain public confidence in the recovery and revitalization of the area; and

WHEREAS, in turn, the recovery and revitalization of lower Manhattan is critical to the long-term economic health and well-being of the City; and

WHEREAS, DBS and DEP have agreed to cooperate on procuring, managing and paying for the services of a public relations consulting firm to gather and disseminate information, respond to public inquiries, and otherwise foster communication between government and the public on progress in the recovery and revitalization of lower Manhattan;

NOW, THEREFORE, the parties hereto agree as follows:

Agreements

1. Retention of Public Relations Consulting Firm. DBS agrees to execute and deliver to EDC a supplement to the EDC Agreement, under Section ____ thereof, authorizing and directing EDC to select and contract with a public relations consulting firm (the "Consultant") to perform those services described in Exhibit A attached hereto and made a part hereof (the "Services"), for the benefit of the City. The resulting contract between EDC and the Consultant (the "Consulting Contract") shall be approved by DBS in writing prior to the execution thereof. The Consulting Contract shall include the following provisions:

(a) Work management. [EDC] [DBS] shall be solely responsible for monitoring the performance of the Consultant, approving all deliverables, and reviewing and approving invoices for payment.

(b) Invoicing. The Consultant shall render invoices for its fees and disbursements to EDC no more often than once a month, covering Services performed since the date of the last such invoice. Each invoice shall be accompanied by reasonable back-up in a form prescribed by ____ [who?]. Invoices shall be paid promptly by EDC subject to and in accordance with the terms of the Consulting Contract.

(c) Books and Records; Audit. The Consultant shall make all of its books and records pertaining to the provision of Services available to EDC, DBS and DEP for inspection and copying at any time upon request. EDC, DBS and DEP shall each have the right to audit the Consultant's provision of Services under the Consulting Contract, and the Consultant agrees to cooperate fully in any such audit.

(d) Cooperation with DEP. The Consultant acknowledges that the City intends to seek reimbursement from FEMA for the Consultant's fees and disbursements, through DEP, and the Consultant therefore agrees to cooperate fully with DEP in making any such request for reimbursement, including the provision of any additional information relating to the Consultant or the Services rendered necessary to process any such request.

2. Presentation of Invoices to FEMA; Processing of Reimbursement. DBS shall require EDC to provide DEP (Attention: ____) with complete copies of each invoice submitted by the Consultant, together with all related back-up and proof of payment by EDC. Upon receipt of copies of invoices to EDC from the Consultant, together with related back-up and with proof of payment by EDC, DEP shall present such invoices to FEMA for reimbursement, on such form or forms as FEMA shall prescribe. Any reimbursement received by DEP shall be endorsed, assigned or otherwise paid over to EDC, with a copy of proof of endorsement, assignment or payment delivered to DBS (Attention: ____). [This assumes that DBS does not make EDC "whole" in the first instance] If any reimbursement from FEMA is less than the amount invoiced by the Consultant, DBS shall have the sole responsibility of reimbursing EDC for the difference, pursuant to and subject to the terms of the EDC Agreement.

3. Notice of Expiration or Termination. The supplement to the EDC Agreement referred to in Section 1 above shall provide that EDC shall not terminate the Consulting Contract except with the approval of DBS, and shall send prompt written notice of the expiration or termination of the Consulting Contract to DEP (Attention: _____) and DBS (Attention: _____).

4. No Representations; No Liability under Consulting Contract. DEP makes no representation or warranty as to the amount of any reimbursement that may be obtainable from FEMA, and does not guaranty that reimbursements received will equal the amounts paid by EDC to the Consultant for its Services under the Consulting Contract. DEP is not a party to the EDC Agreement or the Consulting Contract and nothing contained herein (including the making of any reimbursement request by DEP to FEMA pursuant to the terms hereof) shall be deemed to make DEP a party to either the EDC Agreement or the Consulting Contract, or to impose any liability on DEP for the performance of the EDC Agreement or the Consulting Contract.

5. Notices. Any notices required or permitted hereunder shall be in writing and shall be delivered by hand, or by overnight courier, by certified mail, return receipt requested, or by facsimile (with a confirming copy sent by certified mail, return receipt requested), addressed as follows:

If to DBS, to:

 Attention: _____
 Telephone: _____
 Facsimile: _____

If to DEP, to:

 Attention: _____
 Telephone: _____
 Facsimile: _____

5. Miscellaneous. This Memorandum of Understanding (i) constitutes the entire understanding between the parties with respect to the subject matter hereof, and supersedes all prior understandings with respect to such subject matter, (ii) may not be amended or assigned

except by written instrument signed by both parties hereto, and (iii) shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this memorandum of Understanding to be signed by their authorized representatives as of the date first above written.

NEW YORK CITY DEPARTMENT OF BUSINESS SERVICES

By _____
Title:

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

By _____
Title:

dbsmou.wpd