## Levine, Robin

**From:** Lieberman, Brian [BLieberm@law.nyc.gov]
**Sent:** Wednesday, October 24, 2007 2:55 PM
**To:** Levine, Robin
**Cc:** Schiano, Frank
**Subject:** FW: Mayor's Office Ongoing WTC Project Preservation Hold Draft
**Attachments:** 1832197_1.DOC

Robin/Frank; FYI, the cover email and draft notice we sent to the Mayor's Office yesterday. Brian

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**From:** Lieberman, Brian
**Sent:** Tuesday, October 23, 2007 2:29 PM
**To:** 'Geller, Brian'; Koch, Joey
**Cc:** Lubinof, Faye; 'Glasband, Elissa'; Small, Adlai
**Subject:** Mayor's Office Ongoing WTC Project Preservation Hold Draft

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Dear Joey and Brian: As per my discussions with Brian, attached is a draft of a proposed "preservation hold"/document retention directive for Mayoral staff regarding new and ongoing WTC-related activities and projects. In accordance with our discussions, it is a comprehensive directive intended for distribution to all Mayoral staff/email users rather than targeted at specific groups of officials and staff involved with the remains searches or any other particular endeavor. I have modeled it upon the directive we used at OCME and are planning to use at most agencies requiring ongoing preservation holds. The hold directive reminds everyone generally of the need to preserve and not delete or destroy WTC-related documents and data and uses as specific illustrations the three major areas we had identified in our prior meetings/discussions: the deconstruction projects, the search for the remains of WTC victims and the implementation of the Health Panel Report. Patton Boggs, as counsel for the City on the WTC litigation, has reviewed and concurred with the draft as presently written. Please let me know your comments, changes/additions, etc., once you have had an opportunity to review.

Sincerely,

Brian

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III.

**Credit Facility**

(a) During any Daily Rate Period, any Weekly Rate Period and any Commercial Paper Rate Period, the Authority shall provide a Credit Facility which meets the requirements under the headings "Requirements of Credit Facility" and "Substitution of Credit Facility" applicable to the substitution of a Credit Facility. The Authority shall also provide a Credit Facility meeting such requirements during any Flexible Rate Period if solely as a result of the failure to provide such a Credit Facility, the long-term ratings on all or a portion of the 2008 Series BB Bonds would be reduced by any Rating Agency.

For each Subseries of 2008 Series BB Bonds, the minimum amount of moneys available to be obtained under a Credit Facility on any date shall be the sum of (i) the principal amount of 2008 Series BB Bonds of such Subseries Outstanding on such date (other than Purchased Bonds or such 2008 Series BB Bonds held by or for the account of the Authority), plus (ii) an amount with respect to interest on such 2008 Series BB Bonds equal to interest accruing for such period and at such rate of interest as in the determination of an Authorized Representative of the Authority is necessary in order to maintain the ratings on such 2008 Series BB Bonds from Moody's, Fitch and S&P. The Authority shall deliver to the Trustee a certificate setting forth (i) the required amount of the Credit Facility and the calculation of the components thereof with respect to the payment of principal of and interest on the applicable Subseries of the 2008 Series BB Bonds and (ii) the interest rate and number of days of interest accruing used to calculate the interest component of the Credit Facility.

(b) The Tender Agent shall take such actions as may be required by a Credit Facility in accordance with its terms to obtain moneys at the times specified in under the heading "Remarketing of the 2008 Series BB Bonds", in the amount necessary, determined in accordance with the provisions under the heading "Remarketing of the 2008 Series BB Bonds", to pay the Purchase Price of tendered 2008 Series BB Bonds (other than Purchased Bonds) payable on the purchase date for such 2008 Series BB Bonds. Moneys obtained under a Credit Facility shall be used by the Tender Agent to pay, on the date due and payable, the Purchase Price of the applicable Outstanding 2008 Series BB Bonds (other than Purchased Bonds) with respect to which such moneys were obtained.

Notwithstanding anything herein to the contrary, moneys obtained under the Credit Facility shall not be deemed the property of the Authority and shall be applied solely in accordance with the terms hereof. Moneys obtained under a Credit Facility shall be held uninvested by the Tender Agent in the Purchase Account of the 2008 Series BB Bonds Purchase and Remarketing Fund, and shall be irrevocably pledged to the Holders of the applicable Subseries of the 2008 Series BB Bonds and applied to the payment of the Purchase Price of such 2008 Series BB Bonds tendered or deemed to have been tendered for purchase in accordance herewith. In no event will moneys obtained under a Credit Facility be applied to the payment of regularly scheduled principal and interest payments on the 2008 Series BB Bonds.

2008 Series BB Bonds (or portions thereof in Authorized Denominations), any portion of the principal of which shall have been paid with moneys obtained under a Credit Facility, shall remain Outstanding and be Purchased Bonds and shall be registered for transfer to the Facility Provider or its designee, at the direction of the Facility Provider, and upon such registration of transfer, the 2008 Series BB Bonds issued in respect thereof shall be (a) delivered to and held by the Trustee on behalf of a Facility Provider or (b) if requested by a Facility Provider, delivered to and held by a Facility Provider, or a designee thereof, as owner.

None of the Trustee, the Tender Agent or the Paying Agent, if any, shall have any lien on the moneys obtained under a Credit Facility or the proceeds of the remarketing of tendered 2008 Series BB Bonds in respect of its compensation or other amounts owing to it. Neither the Tender Agent nor the Trustee shall

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Office of the Mayor: World Trade Center Document Retention Directive

As we have communicated in the past, the City of New York remains obligated to preserve documents that may concern or be relevant to the ongoing litigation relating to the response to the aftermath of the collapse of the World Trade Center ("WTC") buildings following the attacks of September 11, 2001.

The New York City Law Department and our outside counsel have informed the Mayor's Office that this obligation includes the preservation of all documents and evidence, whether in paper or electronic form, which relate in any way to, among other things, the matters listed below and which may have been generated, created, received, sent, or distributed by the Mayor's Office or any of its current or former employees. Categories of WTC-related matters that we have recently identified include:

(1) The implementation by City agencies of the findings and recommendations in the WTC Health Panel Report, "Addressing the Health Impacts of 9-11: Report and Recommendations to Mayor Michael R. Bloomberg" (the "**Health Panel Report Implementation**"). "Implementation" is intended broadly to include, for example, initial planning/preparation, establishment and ongoing activities, operations, tasks, etc., of committees, groups, and projects recommended by the Health Panel Report, such as the WTC Medical Working Group, the WTC Health Coordinator's Office and WTC Centers of Excellence.

(2) Projects related to the search for the remains of victims of the WTC attacks ("The Search Projects"). The Search Projects include but are not limited to the following types of efforts: (i) the building and rooftop searches performed at the Deutsche Bank Building (130 Liberty Plaza), the Millennium Hotel (55 Church Street), 1 Liberty Plaza, 130 Cedar Street, and Fitterman Hall; (ii) the re-excavation projects at: Haul Road, the Greek Orthodox Church, Liberty Street, and the West Side Highway; and (iii) the debris sifting projects at 11 Water Street and the 39th Street Pier in Brooklyn.

(3) The deconstruction/demolition of buildings in Lower Manhattan heavily damaged by the WTC attacks, including the Deutsche Bank building (130 Liberty Plaza), 4 Albany and Fitterman Hall (the **"Deconstruction Projects"**).

These categories, and some of the specific items and projects mentioned, are only examples of the types of WTC-related matters we have identified to date. Other relevant matters will likely arise in the near future. Accordingly, please be advised that you must retain, and that you may not delete, erase, alter or otherwise destroy, any relevant data from your work or personal computers, PDAs, electronic data systems, and any other electronic equipment that you may have used in conjunction with your work on any WTC-related matters.

Documents that must be preserved include: all e-mail messages and files (including both work and personal e-mail accounts), correspondence, drafts of working documents, contracts, agreements, memoranda, reports, personal notes, administrative and computer records, word processing files, spreadsheets, voice mail messages and files, back-up voice mail files, backup e-mail files, deleted e-mails, data files, program files, temporary files, system history files, web site information stored in textual, graphical or audio format, web site log files, cache files, cookies, and data stored on hard drives, CDs, floppy disks, PDAs, servers, backup tapes, and any other electronic media. If you have any doubt as to whether particular data should be preserved, you *must* preserve the data.

To the extent possible, these documents should be kept in the locations in which they are maintained in the regular course of business so that we can properly document the source of each document.

Because we are under a legal obligation to maintain all documents and information regarding the Health Report Implementation, Search Projects and Deconstruction Projects (as described above), ***it is critical that no documents or evidence, in paper or electronic form, be deleted, erased, altered, or otherwise destroyed by anyone.*** This policy also applies to any documents you may create in the future that relate to your WTC-related work.

Please do not hesitate to contact me at ______________@cityhall.nyc.gov if you have any questions or concerns. Thank you for your anticipated cooperation in this matter.

seek indemnification prior to obtaining moneys under a Credit Facility, making payments to Bondholders or effecting a mandatory tender of the 2008 Series BB Bonds.

The Tender Agent shall furnish to the Facility Provider such notices as are required under the terms of a Credit Facility, including, without limitation, all notices for obtaining moneys, transfers, cancellations and increases or decreases in the amount available thereunder.

**Substitution of Credit Facility**

(a) Substitution or Replacement. Upon satisfaction of the requirements set forth in this section and in the Credit Facility, the Authority may replace the Credit Facility with a substitute Credit Facility; **provided, however**, that the Subseries of the 2008 Series BB Bonds which are secured by a Credit Facility will be subject to mandatory tender if, solely as a result of such replacement, the long-term or short-term ratings assigned to such 2008 Series BB Bonds by Moody's, Fitch or S&P on the earlier of the immediately preceding Reset Date or Conversion Date would be reduced or withdrawn. The substitute Credit Facility shall be delivered to the Tender Agent.

(b) Documents to be Delivered. Prior to the substitution of any Credit Facility, there shall have been delivered to the Tender Agent:

(i) except as otherwise provided in paragraph (a) above, written advice from each of Moody's, Fitch and S&P that upon such substitution the rating assigned thereby to the 2008 Series BB Bonds will not be reduced, suspended or withdrawn as a result of such substitution;

(ii) an opinion of counsel to the new Facility Provider to the effect that such substitute Credit Facility constitutes a legal, valid and binding obligation of such Facility Provider enforceable in accordance with its terms, subject only to bankruptcy, insolvency, moratorium and other laws affecting creditors' rights insofar as the same may be applicable in the event of a bankruptcy, insolvency, moratorium or other similar proceeding or occurrence with respect to such Facility Provider and to equitable principles;

(iii) an Opinion of Bond Counsel with respect to the substitution or replacement of the current Credit Facility; and

(iv) the written consent of an Authorized Officer of the Authority.

(c) Notice of Substitution. No later than five (5) Business Days prior to the effective date of the substitute Credit Facility the Tender Agent shall give notice to the Holders of the Outstanding 2008 Series BB Bonds, which notice shall contain: (i) a description of such substitute Credit Facility (including the date of expiration of such Credit Facility); (ii) the name of the Facility Provider of such substitute Credit Facility; (iii) a statement as to the ratings on the 2008 Series BB Bonds as a result of the substitution of such substitute Credit Facility for the then existing Credit Facility; and (iv) a statement that the Opinion of Bond Counsel and the opinion of counsel to the Facility Provider necessary for such substitute Credit Facility to become effective have been obtained. Such notice shall be sent by first-class mail, postage prepaid, or at the option of the Tender Agent, by certified mail, return receipt requested, to the registered owners of the 2008 Series BB Bonds, at their last known address, if any, appearing on the registration books. Upon giving such notice, the Tender Agent shall promptly certify to the Authority that it has mailed or caused to be mailed such notice to the Holders of the 2008 Series BB Bonds in the manner provided herein. The failure of any Holder of a 2008 Series BB Bond to receive such notice shall not affect the validity of the proceedings in connection with the effectiveness of such substitute Credit Facility.

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[signed]

**Requirements of Credit Facility**

Any Credit Facility must provide money at the times and in the amounts specified under the heading "Credit Facility". No Credit Facility shall be amended without the consent of the Tender Agent. The Tender Agent shall not consent to any such amendment of a Credit Facility that, in the reasonable judgment of the Tender Agent, would adversely affect the interests of any of the Bondholders, unless such amendment shall not become effective until after the date on which there is a mandatory tender of the applicable Subseries of the 2008 Series BB Bonds. For the purposes of this section an "amendment" of a Credit Facility shall not include an extension of such Credit Facility, a change in the fees charged in connection with the provision of such Credit Facility or any modification of such Credit Facility pursuant to subsection (b)(ii)(E) under the heading "Determination of Rate Mode". The Authority shall give notice of the amendment, appointment, termination, extension, modification or substitution of any Credit Facility to each of Moody's, Fitch and S&P. For the purposes of this section, the Trustee shall be entitled to rely upon an opinion of counsel, which counsel shall be satisfactory to the Trustee, with respect to whether any amendment adversely affects the interests of any of the Holders of Bonds then Outstanding in any material respect.

**Transfer of Credit Facility**

The Tender Agent shall, on or prior to the effective date of its resignation or removal pursuant to the provisions of this Exhibit B to Supplemental Resolution No. 48, cause the transfer of a Credit Facility in accordance with its terms to the successor Tender Agent.