

Gilsenan, Michael

From: Pecunies, Russ [NYCDEP/QUEENS/RUSSP]
Sent: Monday, April 15, 2002 2:40 PM
To: 'Patricia.Trask@fema.gov'; 'Adrian.Sevier@fema.gov'; 'jean.cox@semo.state.ny.us'; 'lilan@cityhall.nyc.gov'; 'lyee@oem.nyc.gov'; 'slevi@law.nyc.gov'; 'grubin@law.nyc.gov'; 'samron@law.nyc.gov'
Cc: Hoffer, Mark; Gilsenan, Michael; Radhakrishnan, Krish
Subject: Downtown Building Cleaning

To update everyone concerning the downtown building cleaning issue...

Bids for all three contracts have been opened and three low bidders have been identified. The contracts have not been awarded pending changes to the insurance specifications and resolution of outstanding issues regarding the letter and license agreement.

I have attached the current drafts of the letter and license agreement. I think the letter is pretty close to being done. Please advise if you have any additional comments.

As for the License Agreement, the new draft incorporates several comments from Steve Levi of NYC Law Dept. You will note that there is no indemnification clause of any kind. This is because I am getting conflicting signals on who needs to be covered by whom and for what. So far it appears that FEMA and SEMO require some kind of language for the City to indemnify NYS from claims arising out of the debris removal so that NYS can indemnify FEMA and Fed Govt from such claims. A question has also been raised as to whether the building owners should be indemnifying NYC. Please provide any and all comments with regard to the issue of indemnification so I can try to pull something together that will satisfy everyone.

Also: FEMA has proposed the addition of the following paragraph:

Licensor shall reimburse Licensee for the removal of the debris accumulations provided for in this License Agreement from any compensation it receives from any other source including, but 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 debris removal that has been performed at Licensee's expense.

Please comment.

Finally, as I mentioned above, we are amending the insurance specs which were included in the bid package. Please provide comments as to who (other than NYC, which is already named) should be named as additional insureds.



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Date

Building Owner Name
Address
City, State, Zip

Subject: ***Building Address, AKA***

Dear Sir/Madam:

The New York City Department of Environmental Protection (DEP) 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 on various buildings in the vicinity of the World Trade Center (WTC). 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 debris accumulations were observed at the above referenced building (the "Building").

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

The USEPA and DEP are continuing their ongoing efforts to improve air quality in lower Manhattan. In this regard, DEP is initiating a program (the "Cleaning Program") to clean the exteriors of certain buildings in the downtown Manhattan area.

Based on visual surveys and analyses of other properties in the area, we are assuming that the debris accumulations noted on the exterior of the Building may 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 NYSDOL 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 the DEP.

The work will be periodically monitored by DEP personnel. 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. The U.S. 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 be paid for by DEP.

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

Please 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 for workers to access the affected surfaces. 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 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.

Sincerely,

Name
Title

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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 an 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").

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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:

(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 or 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 during weekdays beginning at 8:00 a.m. and ending at 4:00 p.m. and excluding Saturdays, Sundays, and Holidays.
- b) Licensee shall provide the Licensor with written notification of its intention to begin the Cleaning Work 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 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.

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- 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;
- 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, address, telephone number and photograph of the person and such other information as may be agreed upon by the Licensee and Licensor.

4. **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.

5. **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.

6. **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.

7. **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.

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

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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.

Dated: _____

Licensor

By: _____

Dated: _____

Licensee

By: _____

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

March 14, 2003

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