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NYC HOUSES REHABILITATION PROGRAM CONTRACT

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CONTRACT  
NYC Houses Rehabilitation Program

THIS CONTRACT, made and entered into \_\_\_\_\_, 2013, by and between the City of New York (“City”), acting by and through the Commissioner of the Department of Environmental Protection (the “Department” or “DEP”), located at 59-17 Junction Blvd, Flushing, New York 11373 and \_\_\_\_\_, located at \_\_\_\_\_.

WITNESSETH:

WHEREAS, Hurricane Sandy struck New York on October 29, 2012, causing unprecedented damage throughout the City and damage to thousands of homes that have not been fully rehabilitated many months later; and

WHEREAS, pursuant to the Disaster Relief Appropriations Act of 2013 (P.L. 113-2), the federal government authorized a supplemental appropriation to improve and streamline disaster assistance for Hurricane Sandy and allocated funds to the Department of Housing and Urban Development (“HUD”) Community Development Fund to pay for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization, for activities authorized under title I of the Housing and Community Development Act of 1974; and

WHEREAS, HUD allocated funds to the City through the Community Development Block Grant Disaster Relief (“CDBG-DR”) Program; and

WHEREAS, the Disaster Relief Appropriations Act also appropriated funds to the Federal Emergency Management Agency (“FEMA”) and other federal agencies to pay for necessary expenses related to disaster relief; and

WHEREAS, in order to aid residents impacted by Hurricane Sandy with CDBG-DR and other federal funds, the City established the NYC Houses Rehabilitation Program (the “HRP”), a construction project to rehabilitate private one- to four-family homes that have been destroyed or damaged by Hurricane Sandy; and

WHEREAS, there is no public use, ownership, access, and/or enjoyment of the private one- to four-family homes to be rehabilitated pursuant to this contract;

NOW THEREFORE, the parties to this Contract, in consideration of the mutual agreements contained herein, agree as follows:

**CHAPTER I - THE CONTRACT AND DEFINITIONS**

**ARTICLE 1. THE CONTRACT**

1.1 Except for titles, subtitles, headings, running headlines, tables of content and indices (all of which are printed herein merely for convenience), the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Contract:

- 1.1.1 The Advertisement and Information For Bidders;
- 1.1.2 The Invitation For Bid (The Bid);
- 1.1.3 The Agreement (this document);
- 1.1.4 Appendix B (Supplementary General Conditions For use with Procurement Contracts and Subrecipient Agreements which provide for an Eligible Activity Funded in Whole or in Part Under Title I of the Housing and Community Development Act of 1974);
- 1.1.5 Hurricane Sandy CDBG-DR Appendix;
- 1.1.6 The Procurement Policy Board Rules, Director's Certificate, or Mayor's Certificate;
- 1.1.7 Schedule A;
- 1.1.8 Local Law 129 of 2005 Notice to all Prospective Contractors and Subcontractor Utilization Plan (also called "Schedule B");
- 1.1.9 The General Requirements and Specifications and Unit Price Book;
- 1.1.10 Environmental Health and Safety Requirements;
- 1.1.11 The Tri-Party Contract to be executed by the City, Contractor, and Homeowner;
- 1.1.12 All Addenda issued by the Agency prior to the receipt of Bids;
- 1.1.13 All provisions required by Law to be inserted in this Contract, whether actually inserted or not;
- 1.1.14 The Notice of Award;
- 1.1.15 Performance and Payment Bonds;
- 1.1.16 Notice to Proceed with Work;
- 1.1.17 Job Orders and Supplemental Job Orders issued pursuant to the Contract;
- 1.1.18 The Broker's Certification;
- 1.1.19 Local Law No. 30 and 33 of 2012 Notice (elsewhere referred to as the Whistleblower Protection Expansion Act Notice);
- 1.1.20 Iran Divestment Act Notice and Compliance Rider; and
- 1.1.21 Electronic Funds Transfer form.

## **ARTICLE 2. DEFINITIONS**

- 2.1 The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context:
- 2.1.1 “Addendum” or “Addenda” shall mean the additional Contract provisions issued in writing by the Commissioner prior to the receipt of bids.
  - 2.1.2 “Agency” shall mean a City, county, borough or other office, position, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.
  - 2.1.3 “Agency Chief Contracting Officer” (ACCO) shall mean a person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO.
  - 2.1.4 “City” shall mean the City of New York.
  - 2.1.5 “City Chief Procurement Officer” (CCPO) shall mean a person delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral Agency staff, including the ACCO and any offices which have oversight responsibility for the procurement of construction.
  - 2.1.6 “Commissioner” shall mean the head of the Department of Environmental Protection or his/her duly authorized representative.
  - 2.1.7 “Comptroller” shall mean the Comptroller of the City of New York.
  - 2.1.8 “Contract” or “Contract Documents” shall mean each of the various parts of the contract referred to in Article 1 hereof, both as a whole and severally.
  - 2.1.9 “Contract Drawings” shall mean only those drawings referenced in a Job Order, or any drawings furnished by the Commissioner, pertaining or supplemental thereto.
  - 2.1.10 “Contractor” shall mean the entity which executed this Contract, whether a corporation, firm, partnership, joint venture, individual, or any combination thereof, and it(s), their, his/ her successors, personal representatives, executors, administrators and assigns, and any person, firm, partnership, joint venture, individual, or corporation which shall at any time be substituted in the place of the Contractor under this Contract.
  - 2.1.11 “Days” shall mean calendar days, except where otherwise specified.
  - 2.1.12 “Detailed Scope of Work” is the document that sets forth the obligations of the Contractor with respect to a Job Order including without limitation all labor, materials and equipment.
  - 2.1.13 “Director of HRP” means the person designated by the Commissioner to oversee the HRP.

2.1.14 “Dwelling” means a one- to four-family home, including the land and building, that was adversely affected by Hurricane Sandy and is designated by the City for participation in the HRP. As appropriate according to the context, “Dwellings” refers to more than one Dwelling assigned to the Contractor or all Dwellings in the HRP.

2.1.15 “Engineer” shall mean the person, who may be a private architect or engineer, so designated in writing by the Director of HRP who has the authority to write and approve Job Orders and Supplemental Job Orders, respond to Requests for Information, and Approve Submittals.

2.1.16 “Engineering Audit Officer” (EAO) shall mean the person so designated by the Commissioner to perform responsible auditing functions hereunder.

2.1.17 “Final Acceptance of Job Order Work” shall mean acceptance of the Detailed Scope of Work as described in the Job Order, by the Inspector, as evidenced by the representative of the Inspector’s signature upon Job Order certificate of completion and acceptance filed with the Project Manager, copy of which shall be sent to the Contractor. Such acceptance shall be deemed to have taken place as the date so stated in such certificate.

2.1.18 “Inspector” shall mean the person so designated in writing by the Director of HRP to inspect the Dwellings and issue the Final Acceptance of Job Order Work.

2.1.19 “Homeowner” shall mean the legal owner of a Dwelling where Work shall occur.

2.1.20 “Homeowner Custom Options” shall mean the materials and appliances that the Homeowner has the authority to select pursuant to the Technical Specifications.

2.1.21 “HRP Management Team” means the City employees designated by the Commissioner and Director of HRP, collectively.

2.1.22 “Job Order” is the document that sets forth the Detailed Scope of Work for each Site, the Job Order Completion Time (start date and duration of Work), the price to be paid therefor (including all Unit Prices and Non-Prepriced Item costs), and the name of the Contractor’s superintendent who is responsible for supervising the Work on the Job Order.

2.1.23 “Job Order Completion Time” shall mean the period of time allotted for the Contractor to complete the Detailed Scope of Work.

2.1.24 “Job Order Payment Request” shall mean the documents required to be submitted to the Project Manager requesting payment approval of an individual Job Order.

2.1.25 “Job Order Work” means any Work required to be done pursuant to a Job Order, except work added by a Supplemental Job Order.

2.1.26 “Joint Scope Meeting” means the initial meeting at a Dwelling designated by the City among the Engineer, the Homeowner, and the Contractor to establish the Job Order.

2.1.27 “Law” or “Laws” shall mean the Constitution of the State of New York, the New York City Charter, the New York City Administrative Code, a Statute of the United States or of the State of New York, a local law of the City of New York, any ordinance, rule or regulation having the force of law, or common law.

2.1.28 “Materialman” shall mean any corporation, firm, partnership, joint venture, or individual, other than employees of the Contractor, who or which contracts with the Contractor or any Subcontractor, to fabricate or deliver, or who actually fabricates or delivers, plant, materials or equipment to be incorporated in the Work.

2.1.29 “Means and Methods of Construction” shall mean the labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Contract.

2.1.30 “Non-Prepriced Item” is an element of Work that is not included in the Unit Price Book.

2.1.31 “Non-Prepriced Item Without Mark-up” is a Non-Prepriced Item for which the City shall reimburse the Contractor at cost without the Adjustment Factor.

2.1.32 “Notice of Joint Scope Meeting” means the notice informing the Contractor that its services are needed and stating the time and location of the meeting.

2.1.33 “Other Contractors” shall mean all the City contractors, except the Contractor, participating in the HRP.

2.1.34 “Procurement Policy Board” (PPB) shall mean the Agency of the City of New York whose function is to establish comprehensive and consistent procurement policies and rules which shall have broad application throughout the City.

2.1.35 “Site” shall mean the Dwelling upon or in which the Contractor's operations are carried on and any real property owned by or leased to the City that the Contractor uses in connection with the HRP (e.g., staging areas).

2.1.36 “Specifications” shall mean all of the directions, requirements and standards of performance applying to the Work as hereinafter detailed and designated under the Specifications.

2.1.37 “Subcontractor” shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or with its Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the site. Wherever the word Subcontractor appears, it shall also mean Sub-Subcontractor.

2.1.38 “Supplemental Job Order” shall mean a Job Order issued to add or delete work from an existing, related Job Order.

2.1.39 “Unit Price Item” is an element of Work that is included in the Unit Price Book..

2.1.40 “Work” shall mean all services required to complete the Detailed Scope of Work in accordance with a Job Order and the Contract Documents, including without limitation, labor, material, superintendence, management, administration, equipment, and incidentals,

and obtaining any and all permits, certifications and licenses as may be necessary and required to complete the Work during the Term and the Maintenance and Guaranty Period.

2.1.41 “Integrity Monitor” means the person or firm hired by the New York City Department of Investigation to conduct audits and investigations.

End of Chapter.

## **CHAPTER II - THE WORK AND ITS PERFORMANCE**

### **ARTICLE 3. SCOPE, TERM, LOCATION, AND CHARACTER OF THE WORK**

3.1 Scope of Work. The purpose of this requirements Contract is to rehabilitate Dwellings damaged by Hurricane Sandy to be assigned to the Contractor by the City pursuant to Article 3.3. As more fully described in this Contract and in Job Orders issued pursuant to this Contract, Work shall include, but not be limited to:

- a. Performance of the Work described in the Detailed Scope of Work referenced in each Job Order. In addition to general rehabilitation and reconstruction work, Work may entail removal of lead paint, asbestos abatement, mold removal, and raising/elevating Dwellings. The Contractor may not refuse to perform any Unit Price Item or any Work in connection with a particular Job Order.
- b. Supervision of Work on Job Orders.
- c. Attendance at all meetings described in this Contract and as requested by the City.
- d. Provision of necessary materials and equipment.
- e. Obtaining all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor.
- f. Obtaining all final approvals for the Work, in the form of such certificates that are required by all governmental agencies having jurisdiction over the Work.
- g. Incidental engineering and architectural services required in connection with a particular Job Order, including drawings required for filing.
- h. Keeping the Dwelling reasonably free of dirt and debris related to the Work.
- i. Obtaining and providing all warranty certificates and appliance operating manuals to the Homeowner.
- j. Implementation of a quality control program.
- k. Repairs to the Work on the Dwelling requested by the City during the Maintenance and Guaranty period.
- l. Cooperation with inspections, audits, and investigations.

- m. Production and delivery of data and reports relating to the services provided under this Contract as they may be required by the City, HUD, or any other State or federal government agency with jurisdiction. Contractor shall provide information necessary for the City to prepare quarterly reports required by HUD. As directed by the Director of HRP, Contractor shall implement project controls and statusing protocols to ensure consistent and timely transmission of data and reports.

3.2. Term. The Contract term shall begin upon registration pursuant to Charter section 328 and end on May 31, 2015, or when Work in an amount equal to the Maximum Contract Value, set forth in Article 74, has been completed, whichever occurs first (the "Term"). The City may renew the Contract for one two-year term. The Contractor must notify the City, in writing, at least six (6) months prior to the expiration of the first Term or when the Job Orders issued total greater than seventy-five (75) percent of the Maximum Contract Value, whichever occurs first, if it will not agree to renew the Contract. If the Contractor fails to provide such notification, the Contractor shall be deemed to consent to the renewal and the City may renew the Contract. If a Job Order or Job Orders are not complete prior to the expiration of the Term, the Contractor shall complete such Job Order Work and all of the terms of this Contract shall apply to such Work.

3.3 Location and Assignment of the Work. (a) Dwellings in the HRP are located in twelve regions delineated by the City; consistent with the Invitation for Bids, the lowest responsible and responsive bidder in each region shall be awarded a contract. The Director of HRP shall assign Work to the Contractor on Dwellings located in the region(s) indicated in Schedule A and delineated in the attached map(s). The City shall not be required to assign all Dwellings located in such region(s) to the Contractor.

(b) It is the City's intent to rehabilitate and reconstruct the most Dwellings in the shortest time possible. The City anticipates assigning a minimum of 30 Job Orders per month to the Contractor within 60 days after the Notice to Proceed, but reserves the right to change the anticipated minimum. The Contractor shall complete Work according to the performance standards in Article 3C(1). On a weekly basis, the Director of HRP shall analyze and compare Contractor's progress to the progress of Other Contractors, focusing on the number of Dwellings for which Job Orders have been completed. Based on the weekly analysis and comparison and the availability of Work, the City shall assign Work to Contractor and Other Contractors so that higher-performing contractors receive more Work than lower-performing contractors. If the Director of HRP determines that there is a need and Contractor has the ability to perform Work in an additional region, the Director of HRP may assign Work to the Contractor on Dwellings located in the additional region indicated in Schedule A. The Director of HRP may assign Dwellings to Other Contractors that are in the region assigned to the Contractor.

(c) The Contractor may not be awarded more than 30 Job Orders per month or Work outside of its region if:

(i) the Contractor's completed Job Order Work fails more than 10% of inspections by the City Department of Buildings or its authorized representative;

(ii) the Contractor's completed Job Order Work fails more than 10% of inspections by the Inspector pursuant to Article 3D;

(iii) the Director of HRP determines that the Contractor is not in compliance with the Environmental Health and Safety Requirements; or

(iv) the Contractor repeatedly fails to comply with submission requirements of this Contract.

3.4 Character of the Work. Unless otherwise expressly provided in the Job Order, the Work shall be performed in accordance with the best modern practice, utilizing, unless otherwise specified in writing, new and unused materials of standard first grade quality and workmanship.

### **ARTICLE 3A. HRP MANAGEMENT**

3A.1 The City or its consultant shall accept applications for participation in the HRP from the public; perform case-management duties relating to the Homeowner; schedule Joint Scope Meetings with the Homeowner, Engineer, and Contractor; and make the determination whether the City will pay for the expenses of temporary relocation of a Homeowner.

3A.2 The City shall establish and make available to Contractors the HRP Construction Management Information System, by which the Contractor shall make certain submittals.

3A.3 The Commissioner shall designate a Director of HRP who shall oversee the Project Managers and the HRP Management Team. The Contractor's attention is directed to Article 33, which sets forth the authority of the Director of HRP.

3A.4 The Director of HRP shall designate six Project Managers to oversee the HRP in accordance with all HRP protocols and policies pursuant to the requirements of this Contract. It is anticipated that each Project Manager will oversee two or three HRP regions. Prior to the start of the Work, the Department shall provide the name and contact information of the Project Manager to the Contractor. The Contractor's attention is directed to Article 32, which sets forth the authority of the Project Managers.

3A.5 The City shall designate an HRP Management Team, which shall consist of City employees and the Project Managers to supervise the HRP and interface with the Integrity Monitor.

3A.6 The Engineer shall have the authority to write and approve Job Orders and Supplemental Job Orders, approve submittals, and respond to requests for information.

3A.7 The Inspector shall have the authority to inspect the Dwellings, order that defective Work be corrected, and issue the Final Acceptance of Job Order Work.

### **ARTICLE 3B. THE JOB ORDER**

3B.1 Purpose of Job Order. The Job Order is the document by which the City directs the Contractor to perform Work on a specific Dwelling.

3B.2 Contents of Job Order. The Job Order shall include the following:

- (a) Detailed Scope of Work for a designated Dwelling including proposals for Non-Prepriced Items,
- (b) Hazards Risk Assessment Documents that describe all lead, asbestos or other hazardous material abatement requirements,
- (c) Contract Drawings, including basic plan and elevation drawings to depict basic scope elements for interior home repairs, shop drawings, working drawings, and detailed engineering drawings and specifications for building raises,
- (d) the price to be paid (including Unit Prices and Non-Prepriced Items),
- (e) the start date,
- (f) the Job Order Completion Time,

- (g) the name, telephone number, and email address of the Engineer, and
- (h) the name, telephone number, and email address of the Contractor's Superintendent responsible for supervising Work on the Job Order. All terms of this Contract shall be applicable to each Job Order.

3B.3 Notification of a Joint Scope Meeting. The City shall notify the Contractor that its services are required by issuing a Notice of Joint Scope Meeting, which sets forth the time and location of the Joint Scope Meeting. The location shall be the address of the Dwelling designated by the City. The Contractor and the Engineer shall attend the Joint Scope Meeting along with the Homeowner. Pursuant to Article 15, the Contractor shall be liable for liquidated damages in the amount specified in Schedule A for failure to arrive at the Joint Scope Meeting within 30 minutes of the time set forth in the Notice.

3B.3(a) If a Dwelling must be raised prior to initiating home repairs, the City shall submit approved engineering drawings and specifications to the Contractor for preparation of Non-Prepriced Item Cost Proposal, pursuant to Article 75.2(b). After the Contractor has submitted its Non-Prepriced Item Cost Proposal and the Engineer has approved the proposal, the City will schedule the Joint Scoping Meeting to finalize the Job Order.

3B.4 Joint Scope Meeting for Dwelling Repairs. At the Joint Scope Meeting, the Engineer and Contractor, in consultation with the Homeowner, shall:

- a. Draft a Job Order including Detailed Scope of Work, construction start date, Job Order Completion Time, and costs for Unit Price Items and Non-Prepriced Items.
- b. Itemize any Non-Prepriced Items that require a cost proposal from the Contractor including description of any hazards abatement work that will be necessary.
- c. Photograph the items in the Dwelling that require Work.
- d. Review Contract Drawings (sketches, plans and elevations).
- e. Select Homeowner Custom Options necessary to complete the Job Order.
- f. Required safety procedures under the EHS; discuss safety issues.
- g. Establish Means and Methods for Construction, pursuant to Article 4.
- h. Determine when the Contractor will have access to the Dwelling.
- i. Execute the Tri-Party Agreement with the Homeowner. If relocation is not necessary, Contractor shall inform Homeowner of risks and potential disruptions and inconveniences that may result from the Work. If it is necessary for the Contractor to submit a Cost Proposal for a Non-Prepriced Item, the Tri-Party Agreement shall be executed after the Engineer approves the Cost Proposal.

The City shall provide language interpretation services for the Homeowner at the Joint Scope Meeting if necessary.

3B.5 The Contractor shall provide sufficient resources to attend all Joint Scoping Meetings.

3B.6 Approval or Reassignment of the Job Order. The proposed Job Order, when signed by the Engineer, the Homeowner, and the Contractor, shall constitute the approved Job Order. The Engineer may assign the Job Order to an Other Contractor if it is in the best interests of the City and/or Homeowner to do so, and the City shall not be liable for the Contractor's costs to attend the Joint Scope Meeting, review the Detailed Scope of Work or similar items.

3B.7 Job Order Completion Time. The Engineer shall establish the Job Order Completion Time at the Joint Scope Meeting based on the amount and complexity of the Work. The Job Order Completion Time shall be one of the following periods:

- a. 14 Days
- b. 28 Days
- c. 42 Days
- d. 56 Days
- e. 94 Days

Pursuant to Article 15, the Contractor shall be liable for liquidated damages for failure to timely complete a Job Order and eligible for a bonus for early completion.

3B.8 Cancellation. The Director of HRP may cancel a Job Order for any reason upon delivery of a written notification of cancellation to the Contractor.

3B.9 Supplemental Job Order. Pursuant to Article 25A, the Director of RRP may issue a Supplemental Job Order if he or she determines that changes to the Detailed Scope of Work, including omitting and adding Work, are necessary.

### **ARTICLE 3C. PERFORMANCE STANDARDS**

3C.1 Starting the later of 60 days after the issuance of the Notice to Proceed or when the City assigns 30 Job Orders to the Contractor, Contractor shall complete Work on at least 90 Job Orders per each consecutive three-month period. If the City assigns the Contractor fewer than 90 Job Orders in a consecutive three-month period, Contractor shall complete all assigned Job Orders.

3C.2 Pursuant to Article 15, the Contractor shall be liable for liquidated damages for failing to complete Work by the Job Order Completion Date set forth in each Job Order and the Contractor shall be eligible for bonuses for completing Work prior to the Job Order Completion Date.

### **ARTICLE 3D. INSPECTION**

3D.1 During the progress of the Work and up to the date of Final Acceptance of each Job Order, as well as during the performance of any Work required pursuant to Article 24, the Contractor shall at all times afford the representatives of the City and the federal government every reasonable, safe and proper facility for inspecting all Work done or being done at the Dwelling and any other Site and also for inspecting the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

3D.2 Each Dwelling will be subject to a minimum of two inspections conducted by the HRP Inspectors: the In-Progress Inspection and the Final Inspection. Additional inspections may be required by the Department of Buildings or for special inspections required under the Building Code (e.g., inspections of masonry, concrete, and structural welding).

- (a) In-Progress Inspection. The Contractor shall request an In-Progress Inspection through the City's Construction Information Management System when all Work that will be subject to

closure (e.g., Work behind dry wall or kitchen cabinetry) is complete and visible. No Work shall be enclosed and made non-visible prior to passing the In-Progress Inspection.

(b) Final Inspection. The Final Inspection shall be conducted pursuant to Article 14.

3.D.3 If a Job Order requires that a Dwelling be raised, the Work on such Dwelling shall be subject to a minimum of two additional inspections, as follows:

(a) Pre-Lift Inspection. At least three days prior to the date that a Dwelling is scheduled to be raised, the Contractor shall notify the Project Manager of the date and time that the Dwelling is scheduled to be raised. The Inspector shall conduct a pre-lift inspection. The Contractor shall not raise the Dwelling unless and until it has obtained approval from the Inspector after the pre-lift inspection. The Contractor shall raise the Dwelling on if the Inspector is on site during the raising.

(b) Foundation Completion Inspection. The Contractor shall notify the Project Manager on the date that the foundation is complete. The Inspector will inspect the structural work for conformance with the Job Order and the home interior for damage caused during the raising. The Contractor shall not commence Work on the rehabilitation of the Dwelling interior until the Inspector approves such raising Work and authorizes the commencement of Work on the interior.

3D.4 The Contractor's obligation hereunder shall include the uncovering or taking down of finished Work and its restoration thereafter; provided, however, that the order to uncover, take down and restore shall be in writing, and further provided that if Work thus exposed proves satisfactory, and if the Contractor has complied with Article 3D.1, such uncovering or taking down and restoration shall be included in a Supplemental Job Order and paid for in accordance with the provisions of the Contract. If the Work thus exposed proves unsatisfactory, the City has no obligation to compensate the Contractor for the uncovering, taking down or restoration.

3D.5 Inspection and approval by the Commissioner, the HRP Management Team, the Director of HRP, the Engineer, Inspector, or Project Manager of finished Work or of Work being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract. Finished or unfinished Work not found to be in strict accordance with the Contract shall be replaced as directed by the HRP Management Team, even though such Work may have been previously approved and paid for. Such corrective Work shall be deemed part of the initial Job Order and the City shall make no additional payment for such Work.

3D.6 Rejected Work and materials shall be promptly taken down and removed from the Dwelling, which must at all times be kept in a reasonably clean and neat condition.

### **ARTICLE 3E. AUDIT BY INTEGRITY MONITOR**

3E.1 The City Department of Investigation (“DOI”) shall engage an Integrity Monitor to monitor the Work of Contractor, including but not limited to its chief executive personnel, employees, Subcontractors, suppliers, vendors and affiliated businesses and monitor and investigate allegations of fraud by the

Contractor and other parties in connection with the HRP. Among other activities, the Integrity Monitor will:

1. conduct audits and investigations to determine Contractor's compliance with the Law;
2. conduct audits and investigations to determine Contractor's compliance with all the terms and conditions of this Contract and any other agreements it enters into with the City in connection with the HRP;
3. examine documents related to the operation of HRP in the possession of Contractor, that may relate to its responsibility;
4. review payment requisitions for accuracy;
5. audit disposal of contaminated and hazardous waste;
6. review payrolls and refer anomalies to DEP;
7. report any integrity issue immediately to DOI;
8. refer any work quality and/or safety issue immediately to DEP and to DOI if the issue relates to the integrity of the Contractor;<sup>1</sup>
9. review Subcontractor approval documents;
10. maintain a site presence; and
11. investigate allegations of fraud in connection with the HRP.

3E.2 Contractor shall fully cooperate with the Integrity Monitor.

3E.3 Based on the Integrity Monitor's reports, the City may take remedial action or declare the Contractor in default pursuant to Chapter X.

#### **ARTICLE 4. MEANS AND METHODS OF CONSTRUCTION**

4.1 Unless otherwise expressly provided in the Detailed Scope of Work, Specifications and Addenda, the Means and Methods of Construction shall be such as the Contractor may choose; subject, however, to the HRP Management Team's right to reject the Means and Methods of Construction proposed by the Contractor which in the opinion of the HRP Management Team:

4.1.1 Will constitute or create a hazard to the Work, or to persons or property; or

4.1.2 Will not produce finished Work in accordance with the terms of the Contract; or

4.1.3 Will be detrimental to the overall progress of the Job Order.

4.2 The HRP Management Team's approval of the Contractor's Means and Methods of Construction, or its failure to exercise its right to reject such Means and Methods of Construction, shall not relieve the Contractor of its obligation to complete the Work as provided in this Contract and in the Job Order; nor shall the exercise of such right to reject create a cause of action for damages.

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<sup>i</sup> With respect to performance issues, DEP will determine what steps need to be taken if Contractor fails to do its job or does an inadequate job. The monitor(s) will identify performance issues for DEP, but DEP will determine the best way to proceed (e.g., require the Contractor to redo Work, withhold payment, replace the Contractor).

## ARTICLE 4A. SUPERVISION OF THE WORK

The Contractor shall be responsible for managing, supervising and directing its employees and Subcontractors. At a minimum, the Contractor shall have at all times a project manager assigned to this Contract and shall designate a superintendent responsible for each Job Order. The superintendent shall be reachable 24 hours a day, seven days a week, until the Job Order is complete. If the named superintendent is not available because of illness or vacation or the like, the Contractor shall notify the City of a substitute superintendent. Whenever, in the sole discretion of the City, the Contractor is not providing a sufficient level of supervision or control, at no additional cost to the City, the City may direct the Contractor to increase the level of supervision and management effort for any or all projects, including but not limited to the right to direct the Contractor to: assign a superintendent who shall dedicate his or her time to supervising a designated Job Order on a full-time basis; submit daily management, inspection, activity, and planning reports; substitute Subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site-specific quality control program.

## ARTICLE 5. COMPLIANCE WITH LAWS

- 5.1 The Contractor shall comply with all Laws applicable to this Contract and to the Work to be done hereunder. The Contractor's attention is directed to federal requirements set forth in Appendix B and the Hurricane Sandy CDBG-DR Appendix.
- 5.2 Procurement Policy Board Rules: This Contract is subject to the Rules of the PPB ("PPB Rules") in effect at the time of the bid opening for this Contract. In the event of a conflict between the PPB Rules and a provision of this Contract, the PPB Rules shall take precedence.

### 5.3 Noise Control Code provisions.

5.3.1 In accordance with the provisions of Section 24-216(b) of the Administrative Code of the City ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the City Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the City Department of Environmental Protection.

5.3.2 The Contractor agrees to comply with Section 24-219 of the Administrative Code and implementing rules codified at 15 Rules of the City of New York ("RCNY") Section 28-100 *et seq.* In accordance with such provisions, the Contractor, if the Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan at each Site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the City Department of Environmental Protection. In addition, the Contractor's certified Construction Noise Mitigation Plan is subject inspection by the City Department of Environmental Protection in accordance with Section 28-101 of Title 15 of RCNY. No Contract Work may take place at a Site unless

there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

5.4 Ultra Low Sulfur Diesel Fuel: In accordance with the provisions of Section 24-163.3 of the Administrative Code, the Contractor specifically agrees as follows:

5.4.1 Definitions. For purposes of this Article 5.4, the following definitions apply:

5.4.1 (a) “Contractor” means any person or entity that enters into a Public Works Contract with a City agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such Public Works Contract

5.4.1(b) “Motor Vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway.

5.4.1(c) “Nonroad Engine” means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

5.4.1(d) “Nonroad Vehicle” means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

5.4.1(e) “Public Works Contract” means a contract with an Agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with an Agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with an Agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

5.4.1 (f) “Ultra Low Sulfur Diesel Fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

5.4.2 Ultra Low Sulfur Diesel Fuel

5.4.2(a) All Contractors shall use Ultra Low Sulfur Diesel Fuel in diesel-powered Nonroad Vehicles in the performance of this Contract.

- 5.4.2(b) Notwithstanding the requirements of Article 5.4.2(a), Contractors may use diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this Article 5.4.2, where the Commissioner of the New York City Department of Environmental Protection ("DEP Commissioner") has issued a determination that a sufficient quantity of Ultra Low Sulfur Diesel Fuel is not available to meet the needs of City agencies and Contractors. Any such determination shall expire after six months unless renewed.
- 5.4.2(c) Contractors shall not be required to comply with this Article 5.4.2 where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Contractor in its fulfillment of the requirements of this Contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of this Article 5.4.2 shall be in full force and effect unless the Agency renews the finding in writing and such renewal is approved by the DEP Commissioner.
- 5.4.2(d) Contractors may check on determinations and approvals issued by the DEP Commissioner pursuant to Section 24-163.3 of the Administrative Code, if any, at [www.dep.nyc.gov](http://www.dep.nyc.gov) or by contacting the Agency issuing this solicitation.
- 5.4.2(e) The requirements of this Article 5.4.2 do not apply where they are precluded by federal or State funding requirements or where the Contract is an emergency procurement.

#### 5.4.3 Best Available Technology

- 5.4.3(a) All Contractors shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this Contract. For determinations of best available technology for each type of diesel-powered Nonroad Vehicle, Contractors shall comply with the regulations of the City Department of Environmental Protection, as and when adopted, Chapter 14 of Title 15 of the Rules of the City of New York (RCNY). The Contractor shall fully document all steps in the best available technology selection process and shall furnish such documentation to the Agency or the DEP Commissioner upon request. The Contractor shall retain all documentation generated in the best available technology selection process for as long as the selected best available technology is in use.
- 5.4.3(b) No Contractor shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered Nonroad Vehicle in accordance with the provisions of this Article 5.4.3 within three years of having first utilized such technology for such vehicle.
- 5.4.3(c) This Article 5.4.3 shall not apply to any vehicle used to satisfy the requirements of a specific Public Works Contract for fewer than twenty calendar days.

5.4.3(d) The Contractor shall not be required to comply with this Article 5.4.3 with respect to a diesel-powered Nonroad Vehicle under the following circumstances:

5.4.3(d)(1) Where the Agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.

5.4.3(d)(2) Where the DEP Commissioner has issued a written waiver based upon the Contractor having demonstrated to the DEP Commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, Contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.

5.4.3(d)(3) In determining which technology to use for the purposes of Articles 5.4.3(d)(1) and 5.4.3(d)(2) above, Contractor shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.

5.4.3(d)(4) Contractors shall submit requests for a finding or a waiver pursuant to this Article 5.4.3(d) in writing to the DEP Commissioner, with a copy to the ACCO of the Agency issuing the solicitation. Any finding or waiver made or issued pursuant to Articles 5.4.3(d)(1) and 5.4.3(d)(2) above shall expire after one hundred eighty days, at which time the requirements of Article 5.4.3(a) shall be in full force and effect unless the Agency renews the finding, in writing, and the DEP Commissioner approves such finding, in writing, or the DEP Commissioner renews the waiver, in writing.

5.4.3(e) The requirements of this Article 5.4.3 do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

5.4.4 Section 24-163 of the Administrative Code. Contractors shall comply with Section 24-163 of the Administrative Code related to the idling of the engines of motor vehicles while parking.

#### 5.4.5 Compliance

5.4.5(a) Contractor's compliance with Article 5.4 may be independently monitored. If it is determined that the Contractor has failed to comply with any provision of Article 5.4, any costs associated with any independent monitoring incurred by the City shall be reimbursed by the Contractor.

5.4.5(b) Any Contractor who violates any provision of Article 5.4, except as provided in Article 5.4.5(c) below, shall be liable for a civil penalty between the amounts of one thousand and ten thousand dollars, in addition to twice the amount of money saved by such Contractor for failure to comply with Article 5.4.

5.4.5(c) No Contractor shall make a false claim with respect to the provisions of Article 5.4 to an Agency. Where a Contractor has been found to have done so, such Contractor

shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such Contractor in association with having made such false claim.

#### 5.4.6 Reporting

5.4.6(a) For all Public Works Contracts covered by this Article 5.4, the Contractor shall report to the Department the following information:

5.4.6(1) The total number of diesel-powered Nonroad Vehicles used to fulfill the requirements of this Public Works Contract;

5.4.6(2) The number of such Nonroad Vehicles that were powered by Ultra Low Sulfur Diesel Fuel;

5.4.6(3) The number of such Nonroad Vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology;

5.4.6(4) The number of such Nonroad Vehicles that utilized such other authorized technology in accordance with Article 5.4.3, including a breakdown by vehicle model and the type of technology used for each such vehicle;

5.4.6(5) The locations where such Nonroad Vehicles were used; and

5.4.6(6) Where a determination is in effect pursuant to Article 5.4.2(b) or 5.4.2(c), detailed information concerning the Contractor's efforts to obtain Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million.

5.4.6(b) The Contractor shall submit the information required by Article 5.4.6(a) at the completion of work under the Public Works Contract and on a yearly basis no later than August 1 throughout the term of the Public Works Contract. The yearly report shall cover work performed the preceding fiscal year (July 1 - June 30).

5.5 Ultra Low Sulfur Diesel Fuel. In accordance with the Coordinated Construction Act for Lower Manhattan, as amended:

5.5.1 Definitions. For purposes of this Article 5.5, the following definitions apply:

5.5.1 (a) "Lower Manhattan" means the area to the south of and within the following lines: a line beginning at a point where the United States pierhead line in the Hudson river as it exists now or may be extended would intersect with the southerly line of West Houston street in the borough of Manhattan extended, thence easterly along the southerly side of West Houston street to the southerly side of Houston street, thence easterly along the southerly side of Houston street to the southerly side of East Houston street, thence northeasterly along the southerly side of East Houston street to the point where it would intersect with the United States pierhead line in the East river as it exists now or may be extended, including tax lots within or immediately adjacent thereto.

5.5.1(b) “Lower Manhattan Redevelopment Project” means any project in Lower Manhattan that is funded in whole or in part with federal or State funding, or any project intended to improve transportation between Lower Manhattan and the two air terminals in the City of New York known as LaGuardia Airport and John F. Kennedy International Airport, or between Lower Manhattan and the air terminal in Newark known as Newark Liberty International Airport, and that is funded in whole or in part with federal funding.

5.5.1(c) “Nonroad Engine” means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

5.5.1(d) “Nonroad Vehicle” means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this terms shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

5.5.1(e) “Ultra Low Sulfur Diesel Fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

5.5.2 Requirements. Contractors and Subcontractors are required to use only Ultra Low Sulfur Diesel Fuel to power the diesel-powered Nonroad Vehicles with engine horsepower (HP) rating of 50 HP and above used on a Lower Manhattan Redevelopment Project and, where practicable, to reduce the emission of pollutants by retrofitting such Nonroad Vehicles with oxidation catalysts, particulate filters, or technology that achieves lowest particulate matter emissions.

5.6 Right To Know. Where applicable, as per the New York State “Right to Know” law and the Federal OSHA Hazard Communication Standard (29 C.F.R. Part 1200), Contractors providing services to the Department are required to submit appropriate Manufacturer’s Safety Data Sheets (MSDS) when using chemically based substances on Properties. Failure to provide the relevant MSDS may result in the termination of the Contract (with applicable penalties). For any questions regarding this regulation contact the BUREAU OF TOXIC SUBSTANCE ASSESSMENT, New York State Health Department; Flanigan Square, 547 River Street, Troy, New York 12180-2216; (518) 402-7800.

5.7 Licenses. Contractor shall ensure that its workers and its Subcontractors possess the licenses necessary to perform the Work.

## **ARTICLE 6. NOT USED**

## **ARTICLE 7. PROTECTION OF WORK AND OF PERSONS AND PROPERTY**

7.1 During the performance of the Work on a Job Order and up to the date of Final Acceptance of the Job Order Work, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work on a Job Order against any damage, loss, injury, theft and/or vandalism and in the

event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace or repair such Work at the Contractor's sole cost and expense, whichever the City shall determine to be preferable. The obligation to deliver finished Work in strict accordance with the Contract and Job Orders shall be absolute and shall not be affected by the Engineer's approval of, or failure to prohibit the Means and Methods of Construction used by the Contractor.

7.2 During the performance of the Work on a Job Order, the Contractor shall take all reasonable precautions to protect the persons and property of the Homeowner and of others from damage, loss or injury resulting from the Contractor's, and/or its Subcontractors' operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, place or replace and adequately maintain at or about the Dwelling suitable and sufficient protection such as lights, barricades, and enclosures.

7.3 The Contractor shall comply with the notification requirements set forth below in the event of any loss, damage or injury to Work, persons or property, or any accidents arising out of the operations of the Contractor and/or its Subcontractors under this Contract.

7.3.1 The Contractor shall make a full and complete report in writing to the Director of HRP within three (3) Days after the occurrence.

7.3.2 The Contractor shall notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any such loss, damage, injury, or accident, and any claim or suit arising therefrom, immediately, but not later than 20 Days after such event. The Contractor's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured and the Homeowner as Additional Insured as well as [the Contractor] as Named Insured." The Contractor's notice to the insurance carrier shall contain the following information: the name of the Contractor, the number of the Contract, the date of the occurrence, the location (street address and borough) of the occurrence, and the identity of the persons or things injured, damaged or lost.

7.3.2(a) At the time notice is provided to the insurance carrier(s), the Contractor shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street - Room 1222, New York, New York, 10007. Notice to the Commissioner shall be sent to the address set forth in Schedule A.

7.3.2(b) If the Contractor fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

7.4 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold the City, its employees, and officials and the Homeowner (the "Indemnitees") harmless against any and all claims (including but not limited to claims asserted by any employee of the Contractor and/or its Subcontractors) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of the Contractor and/or its Subcontractors in the performance of this Contract or from the Contractor's and/or its Subcontractors' failure to comply with any of the provisions of this Contract or of the Law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Article 7.4 by way of cross-claim, third-party

claim, declaratory action or otherwise. The parties expressly agree that the indemnification obligation hereunder contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of Law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of Law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

7.4.1 Indemnification under Article 7.4 or any other provision of the Contract shall operate whether or not Contractor has placed and maintained the insurance specified under Article 22.

7.5 The Contractor waives all rights against the City for any damages or losses for which either is covered under any insurance required under Article 22 (whether or not such insurance is actually procured) or any other insurance applicable to the operations of the Contractor and/or its Subcontractor in the performance of this Contract.

7.6 The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the Contractor or the City.

End of Chapter.

## **CHAPTER III - TIME PROVISIONS**

### **ARTICLE 8. COMMENCEMENT AND PROSECUTION OF THE WORK**

The Contractor shall commence Work on the date specified in the Job Order and complete the Work within the Job Order Completion Time specified in the Job Order. TIME BEING OF THE ESSENCE to the City, the Contractor shall thereafter prosecute the Work diligently, using such Means and Methods of Construction as are in accord with Article 4 herein and as will assure its completion within the Job Order Completion Time or on the date to which the time for completion may be extended.

### **ARTICLE 9. NOT USED**

### **ARTICLE 10. REQUESTS FOR INFORMATION OR APPROVAL**

- 10.1 From time to time as the Work progresses, the Contractor shall submit to the Director of HRP a specific request in writing for each item of information or approval required by the Contractor. These requests shall state the latest date upon which the information or approval is actually required by the Contractor, and shall be submitted in a reasonable time in advance thereof to enable the Director of HRP a sufficient time to act upon such submissions, or any necessary re-submissions thereof. The Contractor shall submit all requests through the HRP Construction Management Information System.
- 10.2 The Contractor shall not have any right to an extension of time on account of delays due to the Contractor's failure to submit requests for the required information or the required approval in accordance with the above requirements.

### **ARTICLE 11. NOT USED**

### **ARTICLE 12. LIABILITY FOR OTHER CONTRACTORS' WORK**

12.1 The City shall not be liable for any damages suffered by any Other Contractor's failure to coordinate its work with the Work of this Contract or by reason of the Other Contractor's failure to promptly comply with the directions so issued by the Director of HRP, or by reason of any Other Contractor's default in performance, it being understood that the City does not guarantee the performance or continued efficiency of any contractor.

12.2 Should Contractor sustain any damage through any act or omission of any Other Contractor, Contractor shall have no claim against the City for such damage.

### **ARTICLE 13. EXTENSION OF TIME FOR PERFORMANCE OF THE CONTRACT**

In the event that Work on a Job Order or Job Orders is not complete when the Term ends, the Contractor shall continue Work on the Job Order and all terms of this Contract shall apply.

## **ARTICLE 13A. EXTENSION OF TIME FOR PERFORMANCE OF A JOB ORDER**

13A.1 If performance by the Contractor on a Job Order is delayed for a reason set forth in Article 13A.3, the Contractor may be allowed a reasonable extension of time in conformance with this Article 13A and the PPB Rules.

13A.2 Any extension of time may be granted only by the ACCO or by the Board for the Extension of Time (hereafter "Board") (as set forth below) upon written application by the Contractor.

13A.3 Grounds for Extension: If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of the Work on the Job Order caused solely:

13A.3.1 By the acts or omissions of the City, its officials, agents or employees; or

13A.3.2 By the act or omissions of Other Contractors on this Project; or

13A.3.3 By supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes not brought about by any act or omission of the Contractor).

13A.3.4 The Contractor shall, however, be entitled to an extension of time for such causes only for the number of Days of delay which the ACCO or the Board may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of Articles 9 and 10.

13A.4 The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the Work as determined by the ACCO or the Board, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its Subcontractors or Materialmen, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

13A.5 The determination made by the ACCO or the Board on an application for an extension of time shall be binding and conclusive on the Contractor.

13A.6 The ACCO or the Board acting entirely within their discretion may grant an application for an extension of time for causes of delay other than those herein referred.

13A.7 Permitting the Contractor to continue with the Work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operate as a waiver on the part of the City of any of its rights under this Contract.

13A.8 Application for Extension of Time:

13A.8.1 Before the Contractor's time extension request will be considered, the Contractor shall notify the ACCO of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the ACCO identifying:

13A.8.1(a) The Contractor; the registration number; and Project description (including the address of the Dwelling applicable to the Job Order, the Job Order construction start date, Job Order Completion Time, and costs for Unit Price Items and Non-Prepriced Items);

13A.8.1(b) Liquidated damage assessment rate, as specified in the Contract;

13A.8.1(c) Original total bid price;

13A.8.1(d) The original Contract start date and completion date ;

13A.8.1(e) Any previous time extensions granted (number and duration); and

13A.8.1(f) The extension of time requested.

13A.8.2 In addition, the application for extension of time shall set forth in detail:

13A.8.2(a) The nature of each alleged cause of delay in completing the Work;

13A.8.2(b) The date upon which each such cause of delay began and ended and the number of Days attributable to each such cause;

13A.8.2(c) A statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for Substantial Completion and final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and

13A.8.2(d) A statement indicating the Contractor's understanding that the time extension is granted only for purposes of permitting continuation of Contract performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

13A.9 Analysis and Approval of Time Extensions:

13A.9.1 For time extensions for partial payments, a written determination shall be made by the ACCO who may, for good and sufficient cause, extend the time for the performance of the Contract as follows:

13A.9.1(a) If the Work is to be completed within six (6) months, the time for performance may be extended for sixty (60) Days;

13A.9.1(b) If the Work is to be completed within less than one (1) year but more than six (6) months, an extension of ninety (90) Days may be granted;

13A.9.1(c) If the Contract period exceeds one (1) year, besides the extension granted in Article 13.9.1(b), an additional thirty (30) Days may be granted for each multiple of six (6) months involved beyond the one (1) year period; or

13A.9.1(d) If exceptional circumstances exist, the ACCO may extend the time for performance beyond the extensions in Articles 13.9.1(a), 13.9.1(b), and 13.9.1(c). In that event, the ACCO shall file with the Mayor's Office of Contract Services a written explanation of the exceptional circumstances.

13A.9.2 For extensions of time for Substantial Completion and final completion payments, the Engineer, in consultation with the ACCO, shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of this Contract). The report shall be subject to review by and approval of the Board, which shall have authority to question its analysis and determinations and request additional facts or documentation. The report as reviewed and made final by the Board shall be made a part of the Agency contract file. Neither the report itself nor anything contained therein shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

13A.9.3 Approval Mechanism for Time Extensions for Substantial Completion or Final Completion Payments: An extension shall be granted only with the approval of the Board which is comprised of the ACCO of the Agency, the City Corporation Counsel, and the Comptroller, or their authorized representatives.

13A.9.4 Neither the granting of any application for an extension of time to the Contractor or any Other Contractor on this Project nor the papers, records or reports related to any application for or grant of an extension of time or determination related thereto shall be referred to or offered in evidence by the Contractor or its attorneys in any action or proceeding.

13A.10 No Damage for Delay: The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, or the Homeowner or other occupants of the Dwelling and agrees that all it may be entitled to on account of any such delay is an extension of time to complete performance of the Job Order Work as provided herein.

13A.11 Assessment of Liquidated Damages: Neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension, shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

#### **ARTICLE 14. COMPLETION AND FINAL ACCEPTANCE OF THE WORK**

14.1 Request for Inspection: Upon completion of the Work, and after an inspection by the Department of Buildings if required by Law, the Contractor shall submit a request for Final Inspection to the HRP Management Team through the HRP Construction Management Information System. The HRP Management team shall schedule a Final Inspection within three (3) Days after receipt of the Contractor's written request therefor.

14.2 Delivery of Warranty Certificates, Manuals, and Drawings: At the Final Inspection, the Contractor shall submit to the Homeowner all Warranty Certificates, Operation Manuals, Drawings, and other documents required in the Specifications. The Contractor shall instruct the Homeowner in the use of appliances installed pursuant to the Job Order. The Inspector shall not issue a written

determination of Final Acceptance unless and until the Contractor provides all such documents to the Homeowner.

- 14.2 Determining the Date of Final Acceptance of a Job Order: The Job Order Work will be accepted as final and complete as of the date of the Final Inspection if, upon such Final Inspection, the Inspector finds that all items on the Detailed Scope of Work are complete and no further Work remains to be done. The Inspector shall then issue a written determination of Final Acceptance.
- 14.3 Request for Re-inspection: If upon inspection for the purpose of Final Acceptance, the Inspector determines that there are items of Work still to be performed, the Contractor shall promptly perform them and then request a re-inspection. If upon re-inspection, the Engineer determines that the Work is satisfactorily completed, the date of such re-inspection shall be the date of Final Acceptance. Re-inspection by the Inspector shall be made within three (3) Days after receipt of the Contractor's written request therefor. The amount listed on the Unit Price list for reinspection shall be deducted from the total price of the Job Order.

#### **ARTICLE 15. BONUS AND LIQUIDATED DAMAGES**

15.1 Liquidated damages may be applied on a Job Order by Job Order basis at the sole discretion of the Director of HRP. In the event the Contractor fails to complete the Detailed Scope of Work for a Job Order within the Job Order Completion Time plus authorized time extensions, or if the Contractor, in the sole determination of the Director of HRP, has abandoned the Work, the Contractor shall pay to the City \$500.00 for each and every Day that the time consumed in completing the Work exceeds the time allowed therefor; which said sum, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the completion of the Work hereunder, is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty. This article shall apply to the Contractor whether or not it is defaulted pursuant to Chapter X of this Contract. Neither the failure to assess liquidated damages nor the granting of any time extension shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

15.2 Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification, or the Contractor's obligation to indemnify the City, or to any other remedy provided for in this Contract or by Law.

15.3 The City may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

15.4 The City shall make a bonus payment to the Contractor if the Contractor satisfactorily completes the Detailed Scope of Work for a Job Order earlier than the Job Order Completion Time. The bonus shall be \$500 per day for each day the Work is completed before the Job Order Completion Time up to 21 days early. The maximum bonus payment allowed per Job Order is \$10,500.

#### **ARTICLE 16. OCCUPATION OR USE PRIOR TO COMPLETION**

16.1 Unless otherwise provided for in the Job Order, the Homeowner may take over, use, occupy or operate any part of the Work at any time prior to Final Acceptance, upon written authorization of

the Contractor. Such authorization must include the date when the Homeowner may take over, use, occupy or operate part of the Work and a brief description of the relevant part of the Work. A copy of such written authorization shall be provided to the City and the Homeowner before Final Acceptance. In the event the Homeowner takes over, uses, occupies, or operates any part of the Work:

- 16.1.1 the Contractor shall issue a written certification of completion with respect to such part of the Work and shall submit a certification form with photo inventory of Work;
- 16.1.2 the Contractor shall be relieved of its absolute obligation to protect such part of the unfinished Work in accordance with Article 7; and
- 16.1.3 the Contractor's guarantee on such part of the Work shall begin on the date in the written authorization by the Contractor required in Article 16.1.

End of Chapter.

## **CHAPTER IV - SUBCONTRACTS AND ASSIGNMENTS**

### **ARTICLE 17. SUBCONTRACTS**

- 17.1 All subcontracts made by the Contractor shall be in writing. No work may be performed by a Subcontractor prior to the Contractor entering into a written subcontract with the Subcontractor and complying with the provisions of this Article 17.
- 17.2 Before making any subcontracts, the Contractor shall submit a written statement to [nychouses@cityhall.nyc.gov](mailto:nychouses@cityhall.nyc.gov) giving the name and address of the proposed Subcontractor, the portion of the Work and materials which it is to perform and furnish, the estimated value of the Subcontractor's work, and any other information tending to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the Work in accordance with the terms and conditions of this Contract. In addition, upon request, Contractor must submit VENDEX questionnaires for a proposed Subcontractor, although such request may come at a later time.
- 17.3 If an approved Subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontract shall be submitted in the same manner as directed above.
- 17.4 The Commissioner will notify the Contractor in writing whether the proposed Subcontractor is qualified or not qualified within five working days of receipt of a completed application. If the proposed Subcontractor is not qualified, the Contractor may submit another proposed Subcontractor unless the Contractor decides to do the Work. No Subcontractor shall be permitted to enter a Dwelling unless approved.
- 17.5 Before entering into any subcontract hereunder, the Contractor shall inform the Subcontractor fully and completely of all provisions and requirements of this Contract relating either directly or indirectly to the Work to be performed and the materials to be furnished under such subcontract, and every such Subcontractor shall expressly stipulate that all labor performed and materials furnished by the Subcontractor shall strictly comply with the requirements of this Contract.

17.6 As of March 2013, the City has implemented a new web based Subcontractor reporting system through the City's Payee Information Portal (PIP), available at [www.nyc.gov/pip](http://www.nyc.gov/pip). In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

In order to obtain Subcontractor approval under this Article and PPB Rule § 4-13, Contractor is required to list the Subcontractor in the system. For each Subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of Subcontractor work, start and end date of the subcontract and identification of the Subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each Subcontractor within 30 days of making the payment. If any of the required information changes throughout the Term of the Contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a Subcontractor and/or to report Subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a Subcontractor along with the required information about the Subcontractor and/or fails to report payments to a Subcontractor, beyond the time frames set forth herein or in the notice from the City. Article 15 shall govern the issue of liquidated damages.

17.7 The Commissioner's approval of a Subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the City for the acts or defaults of its Subcontractor and of such Subcontractor's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.

17.8 This Contract does not obligate Contractor to ensure that Subcontractors maintain any insurance not required by Law. Nevertheless, in the event Contractor requires any Subcontractor to procure insurance with regard to any operations under this Contract and requires such Subcontractor to name Contractor as an additional insured thereunder, Contractor shall ensure that such Subcontractor also name the City, including its officials and employees, and the Homeowner as additional insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

17.9 The Contractor shall promptly, upon request, file with the Engineer a conformed copy of the subcontract and its cost. The subcontract shall provide the following:

17.9.1 Payment to Subcontractors: The agreement between the Contractor and its Subcontractors shall contain the same terms and conditions as to method of payment for Work, labor and materials, and as to retained percentages, as are contained in this Contract.

17.9.2 Not used.

17.9.3 Section 6-123 of the Administrative Code: Pursuant to the requirements of Section 6-123 of the Administrative Code, every agreement between the Contractor and the Subcontractor in excess of \$50,000 shall include provisions that the Subcontractor shall not engage in any unlawful discriminatory practice as defined in Title VIII of the Administrative Code (Section 8-101 *et seq.*).

- 17.10 The Commissioner may deduct from the amounts certified under this Contract to be due to the Contractor, the sum or sums due and owing from the Contractor to the Subcontractors according to the terms of the said subcontracts, and in case of dispute between the Contractor and its Subcontractor, or Subcontractors, as to the amount due and owing, the Commissioner may deduct and withhold from the amounts certified under this Contract to be due to the Contractor such sum or sums as may be claimed by such Subcontractor, or Subcontractors, in a sworn affidavit, to be due and owing until such time as such claim or claims shall have been finally adjusted.
- 17.11 On Contracts where 100% performance bonds and payment bonds are executed, the Contractor shall include on each requisition for payment the following data: Subcontractor's name, value of the subcontract, total amount previously paid to Subcontractor for Work previously requisitioned, and the amount, including retainage, to be paid to the Subcontractor for Work included in the requisition.

### **ARTICLE 18. ASSIGNMENTS**

- 18.1 The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or the right to execute it, or the right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this Contract, unless the previous written consent of the Commissioner shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. When used in Article 18, the phrases "otherwise dispose of this Contract" and "other disposition" shall be broadly construed, and shall be deemed to include, without limitation, sale or transfer of all or a majority of the shares of the Contractor, if the Contractor be a corporation, or any change in controlling ownership of Contractor, if Contractor be a partnership, limited partnership or any other form of business entity.
- 18.2 Such assignment, transfer, or conveyance shall not be valid until filed in the office of the Commissioner and the Comptroller, with the written consent of the Commissioner endorsed thereon or attached thereto.
- 18.3 Failure to obtain the previous written consent of the Commissioner to such an assignment, transfer or conveyance, may result in the revocation and annulment of this Contract. The City shall thereupon be relieved and discharged from any further liability to the Contractor, its assignees, transferees or Subcontractors, who shall forfeit and lose all monies therefor earned under the Contract, except so much as may be required to pay the Contractor's employees.
- 18.4 The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State of New York.
- 18.5 This Contract may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

End of Chapter.

## **CHAPTER V – BONDING, WARRANTIES, INSURANCE, AND GUARANTY**

### **ARTICLE 19. NOT USED**

### **ARTICLE 20. BONDING REQUIREMENTS**

- 20.1 Pursuant to 24 CFR section 85.36(h)(2)&(3), the Contractor shall obtain performance and payment bonds for the full amount of the Contract.
- 20.2 Bonds must be prepared on the form of bonds authorized by the City and attached hereto or on forms approved by the Department. Such bonds must have as surety thereunder, such surety company or companies as are approved by the City of New York and authorized to do business in the State of New York.
- 20.3 Attorneys-in-fact who sign performance or payment bonds must file with each bond a certified copy of their power of attorney to sign said bond.

### **ARTICLE 21. MANUFACTURERS’ WARRANTIES AND GUARANTIES**

The Contractor shall obtain all manufacturers’ warranties and guaranties of all equipment and materials required by the Job Order in the name of the Homeowner and shall deliver to the Inspector at the Final Inspection. All of the Homeowner's rights and title and interest in and to said manufacturers’ warranties and guaranties may be assigned by the Homeowner to any subsequent purchasers or lessees of the premises.

### **ARTICLE 22. INSURANCE**

22.1 Types of Insurance: The Contractor shall procure and maintain the following types of insurance with the minimum limits and special conditions specified in Schedule A. Such insurance shall be maintained from the date the Contractor is required to provide Proof of Insurance pursuant to Article 22.3.1 through the date of completion of all required Work. All insurance shall meet the requirements set forth in this Article 22. Wherever this Article requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

22.1.1 Commercial General Liability Insurance: The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office (“ISO”) Form CG 0001. Such insurance shall be “occurrence” based rather than “claims-made” and include, without limitation, the following types of coverage: premises operations; products and completed operations; contractual liability (including the tort liability of another assumed in a contract); broad form property damage; medical payments; independent contractors; explosion; Personal Injury (Contractual Exclusion deleted); collapse and underground (XCU); construction means and methods; and incidental malpractice. Such insurance shall contain a “per project” aggregate limit, as specified in Schedule A, that applies separately to operations under this Contract.

22.1.1(a) Such Commercial General Liability Insurance shall name the City and the Homeowner as Additional Insureds. Coverage for the City shall specifically include the City's officials and employees, be at least as broad as the latest edition of ISO Form CG 20 10 and provide completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37.

22.1.2 Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance: The Contractor shall provide Workers Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

22.1.3 Commercial Automobile Liability Insurance: The Contractor shall provide Commercial Automobile Liability Insurance for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

22.1.4 Contractors Pollution Liability Insurance: The Contractor shall provide Contractors Pollution Liability Insurance covering bodily injury and property damage. Such insurance shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including asbestos), including any loss, cost or expense incurred as a result of any cleanup of pollutants (including asbestos) or in the investigation, settlement or defense of any claim, action, or proceedings arising from the operations under this Contract. Such insurance shall be in the Contractor's name and list the City and the Homeowner as an Additional Insured and any other entity specified in Schedule A. Coverage shall include, without limitation, (a) loss of use of damaged property or of property that has not been physically injured, (b) transportation, and (c) non-owned disposal sites.

22.1.4(a) Coverage for the City as Additional Insured shall specifically include the City's officials and employees and be at least as broad as provided to the Contractor for this Project.

22.1.4(b) If this insurance is issued on a occurrence basis, such policy or policies shall have completed operation coverage for both the Contractor and the City. If such insurance is written on a claims-made policy, such policy shall have a retroactive date on or before the beginning of Contractor's Work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three (3) years from the time the Work under this Contract is completed.

## 22.2 General Requirements for Insurance Coverage and Policies:

22.2.1 All required insurance policies shall be procured from companies that are licensed to do business in the State of New York and have an A.M. Best rating of at least A-/VII or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Corporation Counsel.

22.2.2 The Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

22.2.3 In his/her sole discretion, the Commissioner may, subject to the approval of the Comptroller and the City Corporation Counsel, accept Letters of Credit and/or custodial accounts in lieu of required insurance.

22.2.4 The City's limits of coverage for all types of insurance required pursuant to Schedule A of the General Conditions shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

22.2.5 The Contractor may satisfy its insurance obligations under this Article 22 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

22.2.6 Policies of insurance provided pursuant to this Article 22 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

22.2.7 Policies of insurance provided pursuant to this Article 22, other than those provided pursuant to Articles 22.1.2 or 22.1.3, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

### 22.3 Proof of Insurance:

22.3.1 For all types of insurance required by Article 22.1 and Schedule A, the Contractor shall file proof of insurance in accordance with this Article 22.3 within ten (10) Days of award.

22.3.2 For Workers' Compensation Insurance provided pursuant to Article 22.1.2, the Contractor shall submit one of the following forms: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. For Disability Benefits Insurance provided pursuant to Article 22.1.2, the Contractor shall submit DB-120.1 - Certificate Of Insurance Coverage Under The NYS Disability Benefits Law, Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. ACORD forms are not acceptable.

22.3.3 For policies provided pursuant to all of Article 22.1 other than Article 22.1.2, the Contractor shall submit one or more Certificates of Insurance on forms acceptable to the Commissioner. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to Article 22.1.1 that the City and the Homeowner is an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms

CG 20 10, CG 20 37, and CG 20 26, as applicable; (c) for insurance required pursuant to Article 22.1.4, that the City and the Homeowner are Additional Insureds thereunder; (d) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number); and (e) the number assigned to the Contract by the City. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form contained in Part III of Schedule A or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

22.3.4 Documentation confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Contract. Such proofs of insurance shall comply with the requirements of Articles 22.3.2 and 22.3.3.

22.3.5 The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Article 22 upon the demand for such policy by the Commissioner or the City Corporation Counsel.

#### 22.4 Operations of the Contractor:

22.4.1 The Contractor shall not commence the Work unless and until all required certificates have been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of a certificate does not excuse the Contractor from securing insurance consistent with all provisions of this Article 22 or of any liability arising from its failure to do so.

22.4.2 The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Contract and shall be authorized to perform Work only during the effective period of all required coverage.

22.4.3 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Commissioner. Upon quitting the Site, except as otherwise directed by the Commissioner, the Contractor shall leave all plant, materials, equipment, tools, and supplies on the Site. Contract time shall continue to run during such periods and no extensions of time will be granted. The Commissioner may also declare the Contractor in default for failure to maintain required insurance.

22.4.4 In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 22 shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Article 22.

22.4.5 Whenever notice of loss, damage, occurrence, accident, claim or action to an insurance company is required under a policy maintained in accordance with this Article 22 (whether on behalf of the Contractor as Named Insured or the City as Additional Insured), the Contractor shall provide timely notice thereof. Such notice shall comply with all of the requirements of Article 7.3.2 of this Contract.

22.5 Subcontractor Insurance: This Contract, including this Article 22, does not obligate the Contractor to ensure that Subcontractors maintain any insurance not required by Law. Nevertheless, in the event the Contractor requires any Subcontractor to procure insurance with regard to any operations under this Contract and requires such Subcontractor to name the Contractor as an Additional Insured thereunder, the Contractor shall ensure that such Subcontractor also name the Homeowner and the City, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

22.6 Wherever reference is made in Article 7 or this Article 22 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Schedule A of the General Conditions. In the event no address is set forth in Schedule A, such documents are to be sent to the Commissioner's address as provided elsewhere in this Contract.

22.7 Materiality/Non-Waiver: The Contractor's failure to secure policies in complete conformity with this Article 22, or to give an insurance company timely notice of any sort required in this Contract or to do anything else required by this Article 22 shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

22.8 Other Remedies: Insurance coverage provided pursuant to this Article 22 or otherwise shall not relieve the Contractor of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Contract or Law.

## **ARTICLE 23. MONEY RETAINED AGAINST CLAIMS**

23.1 If any claim shall be made by any person or entity (including Other Contractors with the City on the HRP) against the City or against the Contractor and the City for any of the following:

- (a) An alleged loss, damage, injury, theft or vandalism of any of the kinds referred to in Articles 7 and 12, plus the reasonable costs of defending the City, which in the opinion of the Comptroller may not be paid by an insurance company (for any reason whatsoever); or
- (b) An infringement of copyrights, patents or use of patented articles, tools, etc., as referred to in Article 57; or
- (c) Damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract,

the amount of such claim, or so much thereof as the Comptroller may deem necessary, may be withheld by the Comptroller, as security against such claim, from any money due hereunder. The Comptroller, in

his/her discretion, may permit the Contractor to substitute other satisfactory security in lieu of the monies so withheld.

23.2 If an action on such claim is timely commenced and the liability of the City, or the Contractor, or both, shall have been established therein by a final judgment of a Court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the Comptroller shall pay such judgment or admitted claim out of the monies retained by the Comptroller under the provisions of this article, and return the balance, if any, without interest, to the Contractor.

23.3 Liens: If any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Contract file a lien against a Dwelling, the Contractor shall promptly discharge such lien pursuant to the New York Lien Law. The City may retain from the monies due or to become due under this Contract, so much of such monies as shall be sufficient to pay the amount claimed and the money so retained may be held by the City until the lien is discharged.

#### **ARTICLE 24. MAINTENANCE AND GUARANTY**

24.1 The Contractor shall promptly repair, replace, restore or rebuild, as the Commissioner or Director of HRP may determine, any finished Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one (1) year period subsequent to the date of Final Acceptance of the Job Order (or use and occupancy in accordance with Article 16).

24.1.1 For one year from the date of Final Acceptance of the Job Order completed by the Contractor, the Contractor shall maintain an email address to receive messages from the City directing the Contractor to repair, replace, restore or rebuild such defects of materials or workmanship or damage.

24.1.2 The Contractor shall check its designated email account at least once each business day and respond to the City's direction within one business day.

24.1.3 The City shall schedule an appointment with the Homeowner, the Contractor, and an Engineer at the Dwelling. Generally such appointment will be scheduled within seven Days, but may be sooner if the defect or damage presents a health or safety risk.

24.1.4 Pursuant to Article 15, the Contractor shall be liable for liquidated damages in the amount specified in Schedule A for failure to arrive at the appointment within 30 minutes of the scheduled time.

24.1.5 At the appointment, the Engineer shall draft a proposed repair order, which describes the Work to be completed and the time for completion. The proposed repair order, when signed by the Engineer, the Homeowner, and the Contractor, shall constitute the approved repair order.

24.1.6 Upon completion of the Work, the Contractor shall notify the HRP Management Team and request an inspection.

24.1.7 The City shall perform an inspection on such Work pursuant to Article 3D.

24.2 A security is required for the Contractor's faithful performance of Work required during the Maintenance and Guaranty period, pursuant to Article 41.1(h).

24.3 If the Contractor has faithfully performed all of its obligations hereunder the Commissioner shall so certify to the Comptroller within five (5) Days after the expiration of one (1) year from the date of Final Acceptance of the last Job Order completed by the Contractor. The security payment shall

be repaid to the Contractor without interest within thirty (30) Days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all of its obligations in connection with the Contract.

- 24.4 Notice by the Director of HRP or Commissioner to the Contractor to repair, replace, rebuild or restore such defective or damaged Work shall be timely, pursuant to this article, if given not later than ten (10) Days subsequent to the expiration of the one (1) year period provided for herein.
- 24.5 If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving such notice, the Commissioner shall have the right to have the Work done by others in the same manner as provided for in the completion of a defaulted Contract, under Article 51.
- 24.6 If the security payment so deposited is insufficient to cover the cost of such Work, the Contractor shall be liable to pay such deficiency on demand by the Commissioner.
- 24.7 The Director of HRP's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor, shall be binding and conclusive upon the Contractor as to the amount thereof.

End of Chapter.

## **CHAPTER VI - CHANGES AND DOCUMENTATION OF CLAIM**

### **ARTICLE 25. CHANGES TO THE CONTRACT**

- 25.1 Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Contractors deviating from the requirements of an original Contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become part of the original Contract.
- 25.2 Contract changes will be made only for work necessary to complete the Work included in the original scope of the Contract, for nonmaterial changes to the scope of the Contract, and/or pursuant to Article 60. Changes are not permitted for any material alteration in the scope of Work. Contract changes may include any contract revision deemed necessary by the Contracting Officer.
- 25.3 If any part of the Work is necessarily delayed by a change order, the Contractor may be entitled to an extension of the Job Order Completion Time.

### **ARTICLE 25A. CHANGES TO A JOB ORDER**

- 25A.1 The Project Manager may make add, modify, or omit Work included in any Job Order and Detailed Scope of Work.
- 25A.2 The Contractor shall be entitled to a Supplemental Job Order for Work not included in a Job Order. All Work in the Supplemental Job Order shall be paid for at the unit prices set forth in the Unit Price Book multiplied by the quantity multiplied by the Unit Price Item Adjustment Factor set forth in Schedule A or as Non-Prepriced Item multiplied by the Non-Prepriced Adjustment Factor set forth in Schedule A (except those Non-Prepriced Items specifically exempt from mark-up) in accordance with the procedure for developing a Job Order. The cost of omitted Work shall be subtracted from the amount due to the Contractor.
- 25A.3 The Contractor shall submit a certified request for a Supplemental Job Order including Job Order number, Dwelling address, written description of changed condition, and photographic inventory of the changed condition. Supplemental Job Orders must be submitted in writing for approval by the Engineer. The Engineer shall review the changed conditions and issue an approval or rejection within four (4) Days of submission of the Supplemental Job Order request. The Engineer may require a Site visit to make the determination.

### **ARTICLE 26. NOT USED**

### **ARTICLE 27. RESOLUTION OF DISPUTES**

- 27.1 All disputes between the City and the Contractor of the kind delineated in this article that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this article and the PPB Rules. The procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.

- 27.1.1 This article shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules, or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
- 27.1.2 This article shall apply only to disputes about the scope of work delineated by the Contract, the interpretation of Contract documents, the amount to be paid for extra Work or disputed Work performed in connection with the Contract, the conformity of the Contractor's Work to the Contract, and the acceptability and quality of the Contractor's Work; such disputes arise when the Engineer, Engineering Audit Office, or other designee of the Commissioner (including, throughout this Article, the Director of HRP or the Inspector), makes a determination with which the Contractor disagrees.
- 27.2 All determinations required by this article shall be made in writing clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this article shall be deemed a non-determination without prejudice that will allow application to the next level.
- 27.3 During such time as any dispute is being presented, heard, and considered pursuant to this article, the Contract terms shall remain in force and the Contractor shall continue to perform Work as directed by the ACCO or the Engineer. Failure of the Contractor to continue Work as directed shall constitute a waiver by the Contractor of its claim.
- 27.4 Presentation of Disputes to Commissioner.

Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Commissioner within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the detailed written submission comprising the complete Notice of Dispute, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner shall submit to the Commissioner all materials he or she deems pertinent to the dispute. Following initial submissions to the Commissioner, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

- 27.4.1 Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor, the ACCO, and the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner to resolve the issue by mutual consent prior to reaching a determination. The Commissioner may seek such technical or other expertise as he or she shall deem

appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Commissioner's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the disputed presented, whether or not the Commissioner participated therein. The Commissioner may or, at the request of any party to the dispute, shall compel the participation of any other Contractor with a Contract related to the Work of this Contract, and that Contractor shall be bound by the decision of the Commissioner. Any Contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this article as the Contractor initiating the dispute.

27.4.2 Commissioner Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Commissioner shall make his or her determination and shall deliver or send a copy of such determination to the Contractor, the ACCO, and Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner together with a statement concerning how the decision may be appealed.

27.4.3 Finality of Commissioner Decision. The Commissioner's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board pursuant to this article. The City may not take a petition to the Contract Dispute Resolution Board. However, if the Contractor takes such a petition, the City may seek, and the Contract Dispute Resolution Board may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Commissioner.

27.5 Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the Contract Dispute Resolution Board, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

27.5.1 Time, Form, and Content of Notice. Within thirty (30) days of its receipt of a decision by the Commissioner, the Contractor shall submit to the Comptroller and to the Commissioner a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief Written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the written decision of the Commissioner; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.

27.5.2 Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Commissioner in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Commissioner except at the request of the Comptroller.

27.5.3 Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in section 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may

also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

- 27.5.4 Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in Article 27.5.3 to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all materials. The Contractor may not present its petition to the Contract Dispute Resolution Board until the period for investigation and compromise delineated in Article 27.5.4 has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.
- 27.6 Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:
- 27.6.1 The chief administrative law judge of the Office of Administrative Trials and Hearings (OATH) or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this article as may be necessary in the execution of the Contract Dispute Resolution Board's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
- 27.6.2 The CCPO or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and
- 27.6.3 A person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH with appropriate background to act as decision-makers in a dispute. Such individual may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represents persons, companies, or organizations having disputes with the City.
- 27.7 Petition to the Contract Dispute Resolution Board. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this article, the Contractor, within thirty (30) days thereafter, may petition the Contract Dispute Resolution Board to review the Commissioner's determination.
- 27.7.1 Form and Content of Petition by Contractor. The Contractor shall present its dispute to the Contract Dispute Resolution Board in the form of a petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the written Decision of the Commissioner, (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the written decision of the Comptroller, if any, and (v) copies of all correspondence with, or written material submitted by the Contractor, to the Comptroller. The Contractor shall concurrently submit four (4) complete sets of the Petition: one set to the Corporation Counsel (Attn: Commercial

and Real Estate Litigation Division) and three (3) sets to the Contract Dispute Resolution Board at OATH's offices with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the written statement of the substance of the dispute, cited in (i) above, to both the Commissioner and the Comptroller.

- 27.7.2 Agency Response. Within thirty (30) Days of its receipt of the petition by the Corporation Counsel, the Agency shall respond to the brief written statement of the Contractor and make available to the Contract Dispute Resolution Board all material it submitted to the Commissioner and Comptroller. Three (3) complete copies of the Agency response shall be provided to the Contract Dispute Resolution Board and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon consent of the parties, for an initial period of up to thirty (30) Days.
- 27.7.3 Further Proceedings. The Contract Dispute Resolution Board shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The Contract Dispute Resolution Board shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the Contract Dispute Resolution Board. The Contract Dispute Resolution Board, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The Contract Dispute Resolution Board, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- 27.7.4 Contract Dispute Resolution Board Determination. Within forty-five (45) Days of the conclusion of all written submissions and oral arguments, the Contract Dispute Resolution Board shall render a written decision resolving the dispute. In an unusually complex case, the Contract Dispute Resolution Board may render its decision in a longer period, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The Contract Dispute Resolution Board's decision must be consistent with the terms of the Contract. Decisions of the Contract Dispute Resolution Board shall only resolve matters before the Contract Dispute Resolution Board and shall not have precedential effect with respect to matters not before the Contract Dispute Resolution Board.
- 27.7.5 Notification of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the Corporation Counsel, the Director of the Office of Construction, and the PPB. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) Days after the date the parties are formally notified of the Contract Dispute Resolution Board's decision.
- 27.7.6 Finality of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board's decision shall be final and binding on all parties. Any party may seek review of the Contract Dispute Resolution Board's decision solely in the form of a challenge, filed within four (4) months of the date of the Contract Dispute Resolution Board's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Laws and Rules. Such review by the court shall be limited to the

question of whether or not the Contract Dispute Resolution Board's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the Contract Dispute Resolution Board in accordance with this article.

- 27.8 Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this article shall not affect or impair the ability of the Commissioner or Contract Dispute Resolution Board to make a binding and final decision pursuant to this article.

#### **ARTICLE 28. RECORD KEEPING FOR DISPUTED WORK**

28.1 While the Contractor or any of its Subcontractors is performing disputed Work, or complying with a determination or order under protest in accordance with Article 27, in each such case the Contractor shall furnish the HRP Management Team daily with three (3) copies of written statements signed by the Contractor's representative at the Dwelling showing:

28.1.1 The name and number of each worker employed on such Work or engaged in complying with such determination or order, the number of hours employed, and the character of the Work each is doing; and

28.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work or compliance with such determination or order, and from whom it was purchased or rented.

28.2 A copy of such statement will be countersigned by the Resident Engineer, noting thereon any items not agreed to or questioned, and will be returned to the Contractor within two (2) Days after submission.

28.3 The Contractor and its Subcontractors, when required by the Commissioner, Director of HRP, or the Comptroller, shall also produce for inspection, at the office of the Contractor or Subcontractor, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, and cancelled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such Work, or in complying with such determination or order, and the amounts expended therefor, and shall permit the Commissioner, Director of HRP and the Comptroller or their designees to make such extracts therefrom, or copies thereof, as they or either of them may desire.

28.4 In connection with the examination provided for herein, the Commissioner or Director of HRP, upon demand therefor, will produce for inspection by the Contractor such records as the Agency may have with respect to such disputed Work performed under protest pursuant to order of the Commissioner or Director of HRP, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

28.5 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Work or compliance with such determination or order.

## **ARTICLE 29. OMITTED WORK**

- 29.1 Pursuant to Article 25A, the City may omit work from a Job Order by issuing a Supplemental Job Order.
- 29.2 Not Used
- 29.3 For units that have been ordered but are only partially completed, the Unit Price shall be reduced by a pro rata portion of the Unit Price bid based upon the percentage of Work omitted subject to Article 29.4.
- 29.4 In the event the Contractor, with respect to any omitted Work, has purchased any non-cancelable material and/or equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract, but not yet incorporated into the Work, the Contractor shall be paid for such material and/or equipment in accordance with Article 64.2.1(b); provided, however, such payment is contingent upon the Contractor's delivery of such material and/or equipment in acceptable condition to a location designated by the City.
- 29.5 The Contractor shall make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

## **ARTICLE 30. NOT USED**

End of Chapter

**CHAPTER VII - POWERS OF THE PROJECT MANAGER, DIRECTOR OF HRP, AND THE COMMISSIONER**

**ARTICLE 31. NOT USED**

**ARTICLE 32. THE PROJECT MANAGER AND ENGINEER**

32.1 The Project Manager or Engineer, in addition to those matters elsewhere herein delegated to the Project Manager and Engineer and expressly made subject to his/her determination, direction or approval, shall have the power, subject to review by the Commissioner or Director of HRP:

32.1.1 To determine the amount, quality, and location of the Work to be paid for hereunder; and

32.1.2 To determine all questions in relation to the Work, to interpret the Job Order, Detailed Scope of Work, Drawings, Specifications, and Addenda, and to resolve all patent inconsistencies or ambiguities therein; and

32.1.3 To determine how the Work of this Contract shall be coordinated with Work of other Contractors engaged simultaneously on a Project, including the power to suspend any part of the Work, but not the whole thereof;

32.1.4 To issue a Supplemental Job Order adding or omitting Work; and

32.1.4 To amplify the Job Order, Detailed Scope of Work, Drawings, add explanatory information and furnish additional Specifications and drawings, consistent with the Job Order.

32.2 The foregoing enumeration shall not imply any limitation upon the power of the Project Manager or Engineer, for it is the intent of this Contract that all of the Work shall generally be subject to his/her determination, direction and approval, except where the determination, direction or approval of someone other than the Project Manager or Engineer is expressly called for herein.

**ARTICLE 33. THE COMMISSIONER AND DIRECTOR OF HRP**

33.1 The Commissioner or the Director of HRP, in addition to those matters elsewhere herein expressly made subject to his/her determination, direction or approval, shall have the power:

33.1.1 To review and make determinations on any and all questions in relation to this Contract and its performance; and

33.1.2 To suspend the whole or any part of any or all Job Orders whenever in his/her judgment such suspension is required:

33.1.3(a) In the interest of the City generally; or

33.1.3(c) To expedite the completion of a particular Job Order even though the completion of a different Job Order may thereby be delayed.

#### **ARTICLE 34. NO ESTOPPEL**

34.1 Neither the City nor any Agency, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Contract by the City, the Commissioner, the Director of HRP, the Engineer, the Inspector, or any other officer, agent or employee of the City, either before or after the final completion and acceptance of the Work and payment therefor:

34.1.1 From showing the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the Work, or any part thereof, does not in fact conform to the requirements of this Contract; and

34.1.2 From demanding and recovering from the Contractor any overpayment made to it, or such damages as the City may sustain by reason of the Contractor's failure to perform each and every part of its Contract.

End of Chapter.

## CHAPTER VIII – LABOR PROVISIONS

### ARTICLE 35. EMPLOYEES

35.1 The Contractor and its Subcontractors shall not employ on the Work:

35.1.1 Anyone who is not competent, faithful and skilled in the Work for which he/she shall be employed; and whenever the Commissioner shall inform the Contractor, in writing, that any employee is, in his/her opinion, incompetent, unfaithful or disobedient, that employee shall be discharged from the Work forthwith, and shall not again be employed upon it; or

35.1.2 Any labor, materials or means whose employment, or utilization during the course of this Contract, may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor or its Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Contract, or by Other Contractors or their Subcontractors pursuant to other Contracts, or on any other building or premises owned or operated by the City, its Agencies, departments, boards or authorities. Any violation by the Contractor of this requirement may, upon certification of the Commissioner, be considered as proper and sufficient cause for declaring the Contractor to be in default, and for the City to take action against it as set forth in Chapter X of this Contract, or such other article of this Contract as the Commissioner may deem proper.

35.2 Reserved.

35.3 In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the Administrative Code, respectively,

35.3.1 The Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (a) the Commissioner of the Department of Investigation, (b) a member of the New York City Council, the Public Advocate, or the Comptroller, or (c) the CCPO, ACCO, Agency head, or Commissioner.

35.3.2 If any of the Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of Article 35.3.1, he or she shall be entitled to bring a cause of action against the Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (a) an injunction to restrain continued retaliation, (b) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (c) reinstatement of full fringe benefits and seniority rights, (d) payment of two times back pay, plus interest, and (e) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

35.3.3 The Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

35.3.3(a) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and

35.3.3(b) the rights and remedies afforded to its employees under Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

35.3.4 For the purposes of this Article 35.3, “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

35.3.5 This Article 35.3 is applicable to all of the Contractor’s Subcontractors having subcontracts with a value in excess of \$100,000; accordingly, the Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

35.4 Article 35.3 is not applicable to this Contract if it is valued at \$100,000 or less. Articles 35.3.1, 35.3.2, 35.3.4, and 35.3.5 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Article 35.3.3 is neither applicable to this Contract if it was solicited prior to October 18, 2012, nor if it is a renewal of a contract executed prior to October 18, 2012.

## **ARTICLE 36. NO DISCRIMINATION**

36.1 The Contractor shall comply with the federal anti-discrimination provisions in Appendix B.

36.2 The Contractor specifically agrees, as required by Section 6-108 of the Administrative Code, as amended, that:

36.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a Contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a Contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

36.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in Article 36.1.2, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

- 36.2.3 Breach of the foregoing provisions shall be deemed a violation of a material provision of this Contract.
- 36.2.4 Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment for not more than thirty (30) Days, or both.
- 36.3 This Contract is subject to the requirements of Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the Rules and Regulations promulgated thereunder. No Contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this Contract, the Contractor agrees that it:
- 36.3.1 Will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, citizenship status, sex, age, disability, marital status, or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment; and
- 36.3.2 Will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the owner's race, creed, color, national origin, citizenship status, sex, age, disability, marital status, or sexual orientation; and
- 36.3.3 Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, citizenship status, disability, marital status, sexual orientation, or that it is an equal employment opportunity employer; and
- 36.3.4 Will send to each labor organization or representative of workers with which it has a Collective Bargaining Agreement or other Contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the Rules and Regulations promulgated thereunder; and
- 36.3.5 Will furnish all information and reports including an Employment Report before the award of the Contract which are required by E.O. 50, the Rules and Regulations promulgated thereunder, and orders of the Department of Business Services, Division of Labor Services ("DLS") and will permit access to its books, records and accounts by the DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 36.4 The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Contract and noncompliance with E.O. 50 and the Rules and Regulations promulgated thereunder. After a hearing held pursuant to the rules of the DLS, the Director of the DLS may direct the Commissioner to impose any or all of the following sanctions:
- 36.4.1 Disapproval of the Contractor; and/or

36.4.2 Suspension or termination of the Contract; and/or

36.4.3 Declaring the Contractor in default; and/or

36.4.4 In lieu of any of the foregoing sanctions, the Director of the DLS may impose an employment program.

Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder, in one or more instances, may result in the Agency declaring the Contractor to be non-responsible.

The Contractor further agrees that it will refrain from entering into any Contract or Contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a Subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

36.5 The Contractor specifically agrees, as required by Section 6-123 of the Administrative Code that:

36.5.1 The Contractor will not engage in any unlawful discriminatory practices in violation of Title VIII of the Administrative Code;

36.5.2 Every agreement between the Contractor and its Subcontractors in excess of \$50,000 shall include a provision that the Subcontractor shall not engage in any unlawful discriminatory practices as defined in Title VIII of the Administrative Code (Section 8-101 et. Seq.);

36.5.3 Any failure to comply with this Article 36.5 may subject the Contractor to the remedies set forth in Section 6-123 of the Administrative Code, including, where appropriate, sanctions, such as withholding payment, imposition of an employment program, finding the Contractor to be in default, cancellation of the Contract, or any other sanction or remedy provided by Law or Contract.

## **ARTICLE 37. LABOR REQUIREMENTS**

37.1 **Minimum Wages:** All persons employed by the Contractor and any Subcontractor in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by Law, not less than the sum mandated by Law. Minimum wages shall be the rates fixed by Federal and State Law. The Contractor shall maintain employment and payroll records that comply with the requirements of the Fair Labor Standards Act.

37.2 **Working Conditions:** No part of the Work, labor or services shall be performed or rendered by the Contractor in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Contract. Compliance with the safety, sanitary and factory inspection Laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this article.

37.3 For any breach or violation of either Working Conditions (Article 37.2) and Minimum Wages (Article 37.1), the party responsible therefore shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any Contracts with the City of such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damage for any other breach of this Contract, a sum equal to the amount of any underpayment of wages due to

any employee engaged in the performance of this Contract. In addition, the Commissioner shall have the right to cancel Contracts and enter into other Contracts for the completion of the original Contract, with or without public letting, and the original Contractor shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Commissioner directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within two (2) years from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

37.4 Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Contract, and grounds for cancellation thereof by the City.

#### **ARTICLE 38. SITE LAMINATED IDENTIFICATION BADGES.**

The Contractor shall provide laminated identification badges which indicate the worker's, laborer's or mechanic's name, trade, employer's name and employment starting date (month/day/year). The Contractor shall require as a condition of employment on the Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the City and Homeowner during the performance of the Work.

#### **ARTICLE 39. DUST HAZARDS**

Should a harmful dust hazard be created in performing the Work of this Contract, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the City of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard. Failure to comply with this provision after notice shall make this Contract voidable in the sole discretion of the City.

End of Chapter.

## **CHAPTER IX - PAYMENTS**

### **ARTICLE 40. PAYMENT FOR A JOB ORDER**

The City shall pay, and the Contractor agrees to accept, in full consideration for the Contractor's performance of each Job Order and Detailed Scope of Work subject to the terms and conditions hereof, the lump sum price including the Unit Price and Non-Prepriced costs set forth in each Job Order.

### **ARTICLE 41. SUBMISSION OF JOB ORDER PAYMENT REQUEST**

41.1 Upon completion of a Job Order, including return of any of the Homeowner's or Occupant's furniture stored by the Contractor, the Contractor shall submit a Job Order Payment Request to the Project Manager for the work completed. The Contractor shall submit a maximum of one Job Order Payment Request per Job Order but a Job Order Payment Request can include multiple Job Orders. The Contractor shall submit a maximum of one Job Order Payment Request per two week period (14 Day period), and shall consist of the individual Job Order Payment Requests that have been accepted pursuant to the Contract and not previously submitted. Contractor shall include with each Job Order Payment Request the following:

- a. An invoice that includes a document summarizing of the total cost of each Job Order listed by Dwelling address
- b. Final Acceptance of Job Order Work
- c. Final Signed Inspection Form Copy of all Required Permits
- d. Daily Sign-In Sheets for Contractor and any Sub-Contractors
- e. Payment Approval and Tracking Sheet
- f. Verification of Payment to Subcontractors
- g. Verified statement of claims of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 27 and 28) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item.
- h. as security for faithful performance of its obligations under Article 24, a deposit of a sum equal to one (1%) of the price of the Job Order in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the Comptroller, or obligations of the City, which the Comptroller may approve as of equal value with the sum so required. In lieu of such deposit, the Contractor may make such security payment to the City by authorizing the Commissioner in writing to deduct one (1%) percent of the payment, which shall be deemed the deposit required.

41.2 Upon review and approval of the Job Order Payment Request, the City shall pay to the Contractor the approved amount applicable to each such Job Order. The City may at all times reserve and retain out of said payments, all such sum or sums which by the terms hereof or by any act of the Legislature of the State of New York, or of any ordinance of the City passed prior to the date hereof, it is, or may be, authorized to reserve and retain. No payments shall be made for a Job Order that has not been issued a written determination of Final Acceptance.

**ARTICLE 42 AUDIT BY THE DEPARTMENT'S ENGINEERING AUDIT OFFICER (EAO)  
AND THE COMPTROLLER OF THE CITY OF NEW YORK**

42.1. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based, are subject to audit by the Department's EAO and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said EAO and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto. The Contractor is advised that all Change Orders (including negotiated ones) are also subject to the EAO's audit.

42.2. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by the Department's EAO and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department's EAO and the Comptroller as they consider necessary.

42.3 All books, vouchers, records, reports, canceled checks and any and all similar material may also be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City.

42.4 The Contractor shall not be entitled to payment for Work until all requirements have been satisfactorily met.

42.5 The Contractor shall comply with the provisions concerning audits in Article 5 of Appendix B.

**ARTICLE 42A CONSTRUCTION CONTRACTOR EVALUATION PROVISION**

The Contractor's performance shall be evaluated by the City no later than 120 days after the last day of each 12 month period following the issuance of the first Job Order ("interim evaluation"). The Contractor's performance shall additionally be evaluated within no later than 120 days after the contract's expiration, completion, or termination date ("final evaluation"). Where the interim and final evaluation are to be performed within the same 120 day period, only the final evaluation need be performed. A copy of each evaluation will be sent to the Contractor not later than 15 calendar days after the evaluation had been prepared, and the Contractor may respond in writing to the performance evaluation. Such responses shall be submitted to the Evaluator not later than 15 calendar days after a copy of the evaluation is sent to the Contractor. The response will be affixed to the evaluation. Failure to respond to a less than satisfactory evaluation may result in review of Contractor's performance when a bid is evaluated, without the benefit of Contractor's response to the evaluation.

## **ARTICLE 43. PROMPT PAYMENT**

- 43.1 The Prompt Payment provisions of the PPB Rules in effect at the time of the Bid will be applicable to payments made under this Contract. The provisions require the payment to Contractor of interest on payments made after the required payment date, except as set forth in the PPB Rules.
- 43.2 The Contractor shall submit a Job Order Payment Request, which includes a proper invoice, to receive payment.
- 43.3 Determination of interest due will be made in accordance with the PPB Rules.
- 43.4 The Invoiced Received or Accepted (“IRA”) date is the date the Contractor’s Job Order Payment Request is approved by the Department.
- 43.5 If the Contractor is paid interest, the proportionate share of that interest shall be forwarded by the Contractor to its Subcontractor(s).
- 43.6 The Contractor shall pay each Subcontractor or Materialman not later than seven (7) Days after receipt of payment out of amounts paid to the Contractor by the City for Work performed by the Subcontractor or Materialman under this Contract.
- 43.6.1 If Contractor fails to make any payment to any Subcontractor or Materialman within seven (7) days after receipt of payment by the City pursuant to section 43.6 herein, then the Contractor shall pay interest on amounts due to such Subcontractor or Materialman at a rate of interest in effect on the date such payment is made by the Contractor computed in accordance with section 756-b (1)(b) of the NY General Business Law. Accrual of interest shall commence on the day immediately following the expiration of the seventh day following receipt of payment to the Contractor by the City and shall end on the date on which payment is made.
- 43.7 The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth above.

## **ARTICLE 44. NOT USED**

## **ARTICLE 45. FINAL REQUEST FOR PAYMENT**

- 45.1 The Contractor shall include in its final Job Order Payment Request the documents required by Article 41 together with any additional certificates and documents required by the Director of HRP and the email address required pursuant to Article 24.1. The Contractor shall submit its final Job Order Payment Request within 90 days or within such additional time as may be granted by the Commissioner in writing. If the Contractor fails to timely submit all required certificates and documents, no payment of the balance claimed shall be made to the Contractor
- 45.2 Verified Statement of Claims: The Contractor shall also submit with the final Job Order Payment Request a final verified statement of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 27 and 28) setting forth with respect to each such claim the total amount thereof, the various

items of labor and materials included therein, and the alleged value of each such item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the Contractor claims the performance of the Work or a particular part thereof was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Commissioner, the Comptroller and, in the event of litigation, the Corporation Counsel of the City shall have the same right to inspect, and to make extracts or copies of, the Contractor's books, vouchers, records, etc., as is referred to in Articles 27 and 28. Nothing contained in this Article, is entitled to or shall relieve the Contractor from the obligation of complying strictly with Articles 27 and 28. The Contractor is warned that unless such claims are completely set forth as herein required, the Contractor, upon acceptance of the final payment in connection with a Job Order, will have waived any such claims.

#### **ARTICLE 45A. FINAL PAYMENT ON THE CONTRACT**

45A.1 Preparation of Final Voucher: With regard to the final payment at the end of the Contract period, upon determining the balance due other than on account of claims, the Department will prepare and certify, for the Commissioner's approval, a voucher for final payment on the overall Contract in that amount less any and all deductions authorized to be made by the Commissioner under this Contract or by Law.

45A.1.1 Payment pursuant to such final voucher, less any deductions authorized to be made by the Commissioner under this Contract or by Law, shall constitute the final payment under this Contract, and shall be made by the Comptroller within thirty (30) Days after the filing of such voucher in his/her office.

45A.2 The Contractor acknowledges that nothing contained in this article is intended to or shall in any way diminish the force and effect of Article 13.

#### **ARTICLE 46. ACCEPTANCE OF FINAL PAYMENT**

46.1 The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment for the Contract, whether such payment be made pursuant to any judgment of any Court, or otherwise, shall constitute and operate as a release to the City from any and all claims of and liability to the Contractor for anything heretofore done or furnished for the Contractor relating to or arising out of such Contract and the Work done thereunder, and for any prior act, neglect or default on the part of the City or any of its officers, agents or employees, excepting only a claim against the City for the amounts deducted or retained in accordance with the terms and provisions of this Contract or by Law, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures which are contained in the verified statement filed with the Contractor's requisitions pursuant to Articles 44 and 45.

46.2 The Contractor is warned that the execution by it of a release, in connection with the acceptance of a final payment, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this article, or those for amounts deducted by the Commissioner from the final requisition or by the Comptroller from a final payment as certified by the Engineer and approved by the Commissioner, shall not be effective to reserve such claims, anything stated to the Contractor orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.

- 46.3 Should the Contractor refuse to accept a final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.
- 46.4 The Contractor, however, shall not be barred from commencing an action for breach of Contract under this provision to the extent permitted by Law and by the terms of the Contract provided that a detailed and verified statement of claim is served upon the contracting Agency and Comptroller not later than forty (40) Days after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

**ARTICLE 47. NOT USED.**

End of Chapter

## **CHAPTER X - CONTRACTOR'S DEFAULT**

### **ARTICLE 48. COMMISSIONER'S RIGHT TO DECLARE CONTRACTOR IN DEFAULT**

- 48.1 In addition to those instances specifically referred to in other Articles herein, the Commissioner shall have the right to declare the Contractor in default of this Contract if:
- 48.1.1 The Contractor fails to commence Work when notified to do so by the Commissioner or the Director of HRP; or if
  - 48.1.2 The Contractor shall abandon the Work; or if
  - 48.1.3 The Contractor shall refuse to proceed with the Work when and as directed by the Commissioner or Director of HRP; or if
  - 48.1.4 The Contractor shall, without just cause, reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the Commissioner, to complete the Work in accordance with the Job Order Schedule; or if
  - 48.1.5 The Contractor shall fail or refuse to increase sufficiently such working force when ordered to do so by the Commissioner or Director of HRP; or if
  - 48.1.6 The Contractor shall fail to satisfactorily complete Work on Job Orders for at least 90 Dwellings in more than one three-month period or such lesser amount assigned by the City; or if
  - 48.1.7 The Contractor shall sublet, assign, transfer, convert or otherwise dispose of this Contract other than as herein specified; or sell or assign a majority interest in the Contractor; or if
  - 48.1.8 The Contractor fails to secure and maintain all required insurance; or if
  - 48.1.9 A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if
  - 48.1.10 The Commissioner shall be of the opinion that the Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if
  - 48.1.11 The Commissioner shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if
  - 48.1.12 The Commissioner shall be of the opinion that the Work cannot be completed within the time provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Commissioner's opinion, attributable to conditions within the Contractor's control; or if

- 48.1.13 The Work is not completed within the time provided therefor or within the time to which the Contractor may be entitled to have such completion extended; or if
- 48.1.14 Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Work, a Job Order, or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made.
- 48.1.15 The Contractor or any of its officers, directors, partners, five (5%) percent shareholders, principals, or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the PPB Rules.
- 48.1.16 The Contractor is in default of the Tri-Party Agreement.
- 48.2 Before the Commissioner shall exercise his/her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard, upon not less than two (2) Days notice.

#### **ARTICLE 49. EXERCISE OF THE RIGHT TO DECLARE DEFAULT**

- 49.1 The right to declare in default for any of the grounds specified or referred to in Article 48 shall be exercised by sending the Contractor a notice, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (hereinafter referred to as a "Notice of Default").
- 49.2 The Commissioner's determination that the Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the determination of the Commissioner, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

#### **ARTICLE 50. QUITTING THE SITE**

- 50.1 Upon receipt of such notice the Contractor shall immediately discontinue all further operations under this Contract and shall immediately quit all Sites.
- 50.2 Contractor shall remove all plant, materials, equipment, tools, and supplies then on such Sites and place such items at the location designated by the City unless otherwise directed to by the Director of HRP or a Project Manager.
- 50.3 Before quitting the site, Contractor shall remove all construction-related debris from the Dwellings where Work is in progress unless otherwise directed to by the Director of HRP or a Project Manager.

#### **ARTICLE 51. COMPLETION OF THE WORK**

- 51.1 The Commissioner, after declaring the Contractor in default, may then have the Work completed by such means and in such manner, by an Other Contractor, by Contract with or without public letting, or otherwise, as he/she may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Site, and also such Subcontractors, as he/she may deem advisable.

- 51.2 After such completion, the Commissioner shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages from the date when the Work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the Work. Such certificate shall be binding and conclusive upon the Contractor, its Sureties, and any person claiming under the Contractor, as to the amount thereof.
- 51.3 The expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, shall be charged against and deducted out of monies which are earned by the Contractor prior to the date of default. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be paid by the Contractor.

#### **ARTICLE 52. PARTIAL DEFAULT**

- 52.1 In case the Commissioner shall declare the Contractor in default as to a part of the Work only, the Contractor shall discontinue such part, shall continue performing the remainder of the Work in strict conformity with the terms of this Contract, and shall in no way hinder or interfere with any Other Contractor(s) or persons whom the Commissioner may engage to complete the Work as to which the Contractor was declared in default.
- 52.2 The provisions of this Chapter relating to declaring the Contractor in default as to the entire Work shall be equally applicable to a declaration of partial default, for a Job Order or any portion thereof, except that the Commissioner shall be entitled to utilize for completion of the part of the Work as to which the Contractor was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the Contractor on such part.

#### **ARTICLE 53. PERFORMANCE OF UNCOMPLETED WORK**

- 53.1 In completing the whole or any part of the Work under the provision of this Chapter X, the Commissioner shall have the power to depart from or change or vary the terms and provisions of this Contract, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Commissioner's certificate of the cost of completion referred to in Article 51, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.

#### **ARTICLE 54. OTHER REMEDIES**

- 54.1 In addition to the right to declare the Contractor in default pursuant to this Chapter X, the Commissioner shall have the absolute right, in his/her sole discretion and without a hearing, to complete or cause to complete in the same manner as described in Articles 51 and 53, any or all unsatisfactory or uncompleted Work that remains after the Job Order Completion Time. A written notice of the exercise of this right shall be sent to the Contractor who shall immediately quit the Site in accordance with the provisions of Article 50.

- 54.2 The previous provisions of this Chapter X shall be in addition to any and all other legal or equitable remedies permissible in the premises.
- 54.3 The exercise by the City of any remedy set forth herein shall not be deemed a waiver by the City of any other legal or equitable remedy contained in this Contract or provided under Law.
- 54.4 The expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, shall be charged against and deducted out of monies which have been earned by the Contractor prior to the date of the exercise of the right set forth in Article 54.1; the balance of such monies, if any, subject to the other provisions of this Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be paid by the Contractor.

End of Chapter

## **CHAPTER XI - MISCELLANEOUS PROVISIONS**

### **ARTICLE 55. CONTRACTOR'S WARRANTIES**

55.1 In consideration of, and to induce, the award of this Contract to the Contractor, the Contractor represents and warrants:

55.1.1 That it is financially solvent, sufficiently experienced and competent to perform the Work;  
and

55.1.2 That the facts stated in its bid and the information given by it pursuant to the Information for Bidders is true and correct in all respects; and

55.1.3 That it has read and complied with all requirements set forth in the Contract.

### **ARTICLE 55A. CONFIDENTIALITY**

55A.1 The Contractor agrees to hold confidential, both during and after the completion or termination of this Contract, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Contract. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Article 55A.2, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Article to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law ("FOIL"), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

55A.2 The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, Subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Contract for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting

agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Contract are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

55A.3 The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Contract.

55A.4 The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Contract, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Contract at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information.

55A.5 At the end of six years from the date of final payment or the date of earlier termination, Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its Subcontractors. If the Contractor or its Subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information.

55A.6 A breach of this Article shall constitute a material breach of this Contract for which the Department may terminate this Contract. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **ARTICLE 56. CLAIMS AND ACTIONS THEREON**

- 56.1 Any claim, that is not subject to dispute resolution under the PPB Rules or this Contract, against the City for damages for breach of Contract shall not be made or asserted in any lawsuit, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as herein before provided.
- 56.2 Nor shall any lawsuit be instituted or maintained on any such claims unless such lawsuit is commenced within six (6) months after the date of Final Acceptance of the Job Order from which the lawsuit or claim arose; except that:
- 56.2.1 Any claims for monies deducted, retained or withheld under the provisions of this Contract shall be asserted within six (6) months after the date when such monies becomes due and payable hereunder; and
- 56.2.2 If the Commissioner exercises his/her right to terminate the Contract pursuant to Article 64, any such lawsuit shall be commenced within six (6) months of the date the Commissioner exercises said right.

## **ARTICLE 57. INFRINGEMENT**

The Contractor shall be solely responsible for and shall indemnify the City against any and all claims and judgments for damages for any infringement of copyright and patents or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the Work, including all costs and expenses which the City shall or may incur or be obligated to pay by reason thereof.

## **ARTICLE 58. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

## **ARTICLE 59. SERVICES OF NOTICES**

- 59.1 The Contractor hereby designates the business address specified in its bid, as the place where all notices, directions or other communications to the Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place, or depositing it in a postpaid wrapper addressed thereto in any post office box (P.O. Box) regularly maintained by the United States Postal Service, shall be conclusively deemed to be sufficient service thereof upon the Contractor as the date of such delivery or deposit.
- 59.2 Such address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor, and delivered to the Commissioner.
- 59.3 Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the Contractor personally, or, if the Contractor is a corporation, upon any officer thereof.

## **ARTICLE 60. LIMITED DEFENSE AND INDEMNIFICATION; ESCALATION**

- 60.1 The rehabilitation of Dwellings, which are privately owned, is not a "public work" as that term is used in Labor Law section 220. The Contractor shall not be required to pay its workers prevailing wages for the Work unless there is a final judicial determination that Labor Law section 220 applies to the Work.
- 60.2 If a court makes a final determination, not subject to appeal, that Labor Law section 220 requires the Contractor to pay prevailing wages and that Article 8 of the Labor Law is applicable to this Work, the ACCO shall issue a change order, pursuant to Article 25, that (i) increases the prices paid to the Contractor in order to pay workers covered by Labor Law section 220 the amount required by prevailing wage schedule issued by the Comptroller and in effect at the time the Work was or is performed and (ii) requires compliance with Article 8 of the Labor Law. The Contractor shall pay workers covered by Labor Law section 220 the difference between wages paid and the amount required pursuant to the Labor Law. Based on the employment and payroll records required by Article 37.1, the City shall reimburse the Contractor for the difference between the hourly rate paid and the amount required by such prevailing wage schedule and shall pay such difference as is applicable for the remainder of the Term.

60.3 The City shall defend and indemnify the Contractor for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising out of any dispute concerning the applicability of Labor Law section 220 to the Work. For the avoidance of doubt, the defense and indemnification in this Article 60.3 shall not apply to any claim that the Contractor has failed to act in accordance with applicable Law, including that the Contractor has failed to comply with Labor Law section 220 subsequent to a final judicial determination that Labor Law section 220 applies.

#### **ARTICLE 61. UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT & ALL LEGAL PROVISIONS DEEMED INCLUDED**

61.1 If this Contract contains any unlawful provision not an essential part of the Contract and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Contract without affecting the binding force of the remainder.

61.2 It is the intent and understanding of the parties to this Contract that each and every provision of Law required to be inserted in this Contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the Law and without prejudice to the rights of either party hereunder.

#### **ARTICLE 62. TAX**

62.1 Pursuant to this Contract, the Contractor agrees to sell all tangible personal property, other than consumable supplies and other tangible personal property that the Contractor is required to remove from the Site during or upon completion of the Work, that is required, necessary or proper for or incidental to the construction and rehabilitation Work covered by this Contract. The purchase by Subcontractors or Materialmen of tangible personal property to be sold hereunder shall be a purchase or procurement for resale to the Contractor (either directly or through other Subcontractors). The sum paid under this Contract for such tangible personal property shall be in full payment and consideration for the sale of such tangible personal property.

62.2 The Contractor may include in its bid the cost to the Contractor of Federal, State, and local taxes, including sales and compensating use taxes of the State of New York and its cities and counties on tangible personal property incorporated into the Dwellings. The Contractor and its Subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensation Use Taxes, on tangible personal property and leased tools, machinery, equipment or other property.

62.3 The Contractor shall not charge taxes to the City for services, including but not limited to, labor and profit.

#### **ARTICLE 63. INVESTIGATION(S) CLAUSE**

63.1 The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a United States, a State of New York (State) or a City governmental Agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental Agency

that is a party in interest to the transaction, submitted bid, submitted proposal, Contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

- 63.2 If any person who has been advised that his/her statement, and any information from such statement, will not be used against him/her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental Agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, Contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State of New York, or;
- 63.3 If any person refuses to testify for a reason other than the assertion of his/her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental Agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental Agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under any transaction, agreement, lease, permit, Contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
- 63.4 The Commissioner whose Agency is a party in interest to the transaction, submitted bid, submitted proposal, Contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- 63.5 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing may, upon granting the adjournment, suspend any Contract, lease, permit, or license, pending the final determination pursuant to Article 63.7 without the City incurring any penalty or damages for delay or otherwise.
- 63.6 The penalties which may attach after a final determination by the Commissioner may include but shall not exceed:
  - 63.6.1 The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any Contract, lease, permit or license with or from the City; and/or
  - 63.6.2 The cancellation or termination of any and all such existing City Contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, Work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- 63.7 The Commissioner shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in Articles 63.7.1 and 63.7.2. The Commissioner may also

consider, if relevant and appropriate, the criteria established in Articles 63.7.3 and 63.7.4, in addition to any other information which may be relevant and appropriate:

63.7.1 The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

63.7.2 The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

63.7.3 The nexus of the testimony sought to the subject entity and its Contracts, leases, permits or licenses with the City.

63.7.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Article 63.6, provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in Article 63.4, gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

#### 63.8 Definitions:

63.8.1 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

63.8.2 The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

63.8.3 The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, joint venture, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

63.8.4 The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

63.9 In addition to and notwithstanding any other provision of this Contract, the Commissioner may in his/her sole discretion terminate this Contract upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of the Department of Investigations ("DOI") of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

### **ARTICLE 64. TERMINATION BY THE CITY**

- 64.1 In addition to termination pursuant to any other article of this Contract, the Commissioner may, at any time, terminate this Contract, a Job Order, or a portion of a Job Order, by written notice to the Contractor. In the event of such termination, the Contractor shall, upon receipt of such notice, unless otherwise directed by the Commissioner:
- 64.1.1 Stop Work on the date specified in the notice;
  - 64.1.2 Take such action as may be necessary for the protection and preservation of the City's and Homeowner's materials and property;
  - 64.1.3 Cancel all cancelable orders for material and equipment;
  - 64.1.4 Assign to the City and deliver to the Dwelling or another location designated by the Commissioner, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract and not incorporated in the Work;
  - 64.1.5 Take no action which will increase the amounts payable by the City under this Contract.
- 64.2 In the event of termination by the City pursuant to this article, payment to the Contractor shall be in accordance with Articles 64.2.1, 64.2.2 or 64.2.3, to the extent that each respective article applies.
- 64.2.1(b) For non-cancelable material and equipment, less salvage value, that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract, but not yet incorporated in the Work, the Contractor shall be paid the lesser of:
    - 64.2.1(b)(i) The direct cost, as defined in Article 64.2.5; or
    - 64.2.1(b)(ii) The fair and reasonable value, whichever is less, of such material and equipment, plus necessary and reasonable delivery costs.
    - 64.2.1(b)(iii) In addition, the Contractor shall be paid five (5%) percent of Article 64.2.1(b)(i) or Article 64.2.1(b)(ii), whichever applies.
  - 64.2.2 Unit Price Items: On all Unit Price items the City will pay the Contractor the sum of Articles 64.2.2(a) and 64.2.2(b), less all payments previously made pursuant to this Contract:
    - 64.2.2(a) For all completed units, the Unit Price stated in the Contract, and
    - 64.2.2(b) For units that have been ordered but are only partially completed, the Contractor will be paid:
      - 64.2.2(b)(i) A pro rata portion of the Unit Price stated in the Contract based upon the percent completion of the unit and

64.2.2(b)(ii) For non-cancelable material and equipment, payment will be made pursuant to Article 64.2.1(b).

- 64.3 In no event shall any payments under this article exceed the Contract price for such items.
- 64.4 All payments pursuant to this article shall be in the nature of liquidated damages and shall be accepted by the Contractor in full satisfaction of all claims against the City.
- 64.5 The City may deduct or set off against any sums due and payable pursuant to this article, any deductions authorized by this Contract or by Law (including but not limited to liquidated damages) and any claims it may have against the Contractor. The City's exercise of the right to terminate the Contract pursuant to this article shall not impair or otherwise effect the City's right to assert any claims it may have against the Contractor in a plenary action.
- 64.6 A termination for convenience shall not limit or impair the City's rights to seek damages for any breach of the Contract.

#### **ARTICLE 65. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

- 65.1 This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York and the Laws of the United States, where applicable.
- 65.2 The parties agree that any and all claims asserted against the City arising under this Contract or related thereto shall be heard and determined in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Contract and intent, the Contractor agrees:
- 65.2.1 If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing; and
- 65.2.2 With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have:
- 65.2.2(a) To move to dismiss on grounds of forum non conveniens;
- 65.2.2(b) To remove to Federal Court; and
- 65.2.2(c) To move for a change of venue to a New York State Court outside New York County.
- 65.2.3 With respect to any action brought by the City against the Contractor in Federal Court located in the City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City.
- 65.2.4 If the Contractor commences any action against the City in a Court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a State Court of competent jurisdiction located in the City and

State of New York or, if the Court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstate the action in a State Court of competent jurisdiction in the City.

- 65.3 If any provision(s) of this article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

#### **ARTICLE 66. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

- 66.1 The Contractor agrees that neither the Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- 66.2 Upon the final determination by the Commerce Department or any other Agency of the United States as to, or conviction of the Contractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his/her option, render forfeit and void this Contract.
- 66.3 The Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code and the rules and regulations issued by the Comptroller thereunder.

#### **ARTICLE 67. NOT USED.**

#### **ARTICLE 68. ANTITRUST**

The Contractor hereby assigns, sells and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust Laws of New York State or of the United States relating to the particular goods or services purchased or procured by the City under this Contract.

#### **ARTICLE 69. MacBRIDE PRINCIPLES PROVISIONS**

- 69.1 Notice To All Prospective Contractors:
- 69.1.1 Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 of the Administrative Code. The local Law provides for certain restrictions on City Contracts to express the opposition of the people of the City to employment discrimination practices in Northern Ireland to promote freedom of work-place opportunity.
- 69.1.2 Pursuant to Section 6-115.1, prospective Contractors for Contracts to provide goods or services involving an expenditure of an amount greater than ten thousand (\$10,000.) dollars, or for construction involving an amount greater than fifteen thousand (\$15,000.) dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their Contract, that any business operations in Northern Ireland conducted by the Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater

ownership interest in the Contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

69.1.3 Prospective Contractors are not required to agree to these conditions. However, in the case of Contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a Contract to supply goods, services or contraction of comparable quality, the Agency shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable Law and rules, that it is in the best interest of the City that the Contract be awarded to other than the lowest responsible pursuant to Section 313(b)(2) of the City Charter.

69.1.4 In the case of Contracts let by other than competitive sealed bidding, if a prospective Contractor does not agree to these conditions, no Agency, elected official or the City Council shall award the Contract to that bidder unless the Agency seeking to use the goods, services or construction certifies in writing that the Contract is necessary for the Agency to perform its functions and there is no other responsible Contractor who will supply goods, services or construction of comparable quality at a comparable price.

69.2 In accordance with Section 6-115.1 of the Administrative Code, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor either:

69.2.1 Have no business operations in Northern Ireland, or

69.2.2 Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

69.3 For purposes of this Article, the following terms shall have the following meanings:

69.3.1 "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of work-place opportunity which require employers doing business in Northern Ireland to:

69.3.1(a) increase the representation of individuals from under-represented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;

69.3.1(b) take steps to promote adequate security for the protection of employees from under-represented religious groups both at the work-place and while traveling to and from Work;

69.3.1(c) ban provocative religious or political emblems from the workplace;

69.3.1(d) publicly advertise all job openings and make special recruitment efforts to attract applicants from under-represented religious groups;

69.3.1(e) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

- 69.3.1(f) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- 69.3.1(g) develop training programs that will prepare substantial numbers of current employees from under-represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from under-represented religious groups;
- 69.3.1(h) establish procedures to assess, identify and actively recruit employees from under-represented religious groups with potential for further advancement; and
- 69.3.1(i) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

69.4 The Contractor agrees that the covenants and representations in Article 69.2 are material conditions to this Contract. In the event the Agency receives information that the Contractor who made the stipulation required by this Article is in violation thereof, the Agency shall review such information and give the Contractor an opportunity to respond. If the Agency finds that a violation has occurred, the Agency shall have the right to declare the Contractor in default and/or terminate this Contract for cause and procure supplies, services or Work from another source in the manner the Agency deems proper. In the event of such termination, the Contractor shall pay to the Agency, or the Agency in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and the cost to the Agency of completing performance of this Contract either itself or by engaging another Contractor or Contractors. In the case of a requirement Contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the Agency for the uncompleted Term of Contractor's Contract. In the case of a construction Contract, the Agency shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the Agency hereunder shall be in addition to, and not in lieu of, any rights and remedies the Agency has pursuant to this Contract or by operation of Law.

#### **ARTICLE 70. LOCAL RESOURCES**

The City encourages the Contractor to understand the local community and use local resources where appropriate.

#### **ARTICLE 71. PROHIBITION OF TROPICAL HARDWOODS**

Tropical hardwoods, as defined in Section 165 of the New York State Finance Law ("Finance Law"), shall not be utilized in the performance of this Contract except as expressly permitted by Section 165 of the Finance Law.

## **ARTICLE 72. CONFLICTS OF INTEREST; RESTRICTIONS**

- 72.1 Section 2604 of the City Charter and other related provisions of the City Charter, the Administrative Code and the Penal Law are applicable under the terms of this Contract in relation to Conflicts of Interest and shall be extended to Subcontractors authorized to perform Work, labor and services pursuant to this Contract and further, it shall be the duty and responsibility of the Contractor to so inform its respective Subcontractors. Notice is hereby given that, under certain circumstances, penalties may be invoked against the donor as well as the recipient of any form of valuable gift.
- 72.2 The Contractor and its Subcontractors shall not request payment from the Homeowner for any Work on a Dwelling pursuant to this Contract.
- 72.3 The Contractor is prohibited from performing or soliciting home improvement work, as the term “home improvement” is defined in section 20-386(2) of the New York City Administrative Code, on a Dwelling on which it performed Work pursuant to the HRP until the conclusion of the HRP. Contractors shall include in all Subcontracts a provision prohibiting its Subcontractors from performing or soliciting home improvement work, as the term “home improvement” is defined in section 20-386(2) of the New York City Administrative Code, on a Dwelling on which the subcontractor performed Work pursuant to the HRP until the conclusion of the HRP. The Commissioner or Director of HRP may waive this restriction upon a request by the Contractor if it is in the best interest of the City and/or the Homeowner.

## **ARTICLE 73. MERGER CLAUSE**

The Written Contract herein, contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

## **ARTICLE 74. NO THIRD PARTY RIGHTS**

The provisions of this Contract shall not be deemed to create any new right of action in favor of third parties against the Contractor or the City.

## **ARTICLE 75. COMPENSATION TO BE PAID TO CONTRACTOR**

75.1 Maximum Contract Values. The Department shall pay the Contractor an amount not to exceed thirty million dollars (\$30,000,000) for all Work provided under this requirements Contract. The City does not guarantee that the value of Job Orders issued to the Contractor will total the maximum contract amount. This Contract shall not obligate the Department beyond the dollar amount designated as the maximum contract amount, and the City shall not issue Job Orders exceeding the maximum contract amount, in the absence of a duly executed written contract amendment registered pursuant to section 328 of the New York City Charter.

75.2 Method of Calculating Compensation. The price of each Job Order shall be the sum of the Unit Prices and Non-Prepriced Items, calculated as follows:

- i. The sum of the following calculation for each Unit Price: the Unit Price Item multiplied by the quantity multiplied by the Unit Price Item Adjustment Factor set forth in Schedule A; plus
  - ii. The sum of all Non-Prepriced Items, except those specifically exempt from mark-up (such as application and filing fees) multiplied by the Non-Prepriced Adjustment Factor set forth in Schedule A.
- b. Preparation of Non-Prepriced Item Cost Proposal. Where Non-Prepriced Tasks are identified during the Joint Scope Meeting and itemized on the Detailed Work Order, the Contractor shall submit a scoping document including a cost proposal for Non-Prepriced tasks. The City's determination as to whether an item is a Unit Price Item or a Non-Prepriced Item shall be final, binding and conclusive as to the Contractor. The Non-Prepriced scoping document and cost proposal shall be submitted no later than 14 days from the date of the Joint Scope Meeting. The Contractor shall demonstrate that the proposed price is reasonable. No payment for a Non-Prepriced Item shall be made unless the price is approved by the Engineer. The cost proposal shall include as a minimum, the following information:
- i. Catalog cuts, specifications, technical data, calculations, drawings, or other information as required to evaluate the proposed item.
  - ii. If the Contractor will perform the Work with its own forces, it shall submit three independent quotes for all material and equipment to be installed. If the Work is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. If three quotes or bids cannot be obtained, the Contractor will provide reason in writing for the City's approval. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. The City may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not reasonable.
  - iii. The final price submitted for Non-Prepriced Items shall be according to the following formula:
    - a. Reasonable Labor Costs (including built-up labor rates)
    - b. Direct Material Costs (supported by three quotes)
    - c. Direct Equipment Costs supported by equipment amortization data
    - d. Subcontractor Costs (supported by three quotes)
    - e. Other Non-Prepriced Items approved herein
    - f. Total Cost of Non-Prepriced Item = (a +b +c+d+e)\*  
(Contractor's NPP Adjustment Factor)
- c. After a Non-Prepriced Item is used on three separate Job Orders, the Unit Price for such item will be established, following approval by the City, and

fixed as a permanent Unit Price Item which will no longer require price justification. There are two Adjustment Factors for this Contract including the Unit Price Adjustment Factor and the Non-Prepriced Adjustment Factor. When preparing a proposal, the Contractor shall select the appropriate Adjustment Factor for each task.

- d. The Unit Price Adjustment Factor will be adjusted on the first anniversary of the bid date, and each 12 months thereafter, in accordance with the Cost Construction Index as published in ENR, pursuant to the set forth below. This provision provides a means to update the base year Adjustment Factor to the subsequent year adjustment factor by using actual escalation/de-escalation as measured by the Construction Cost Index (CCI) published in the ENR.
  1. The originally bid Adjustment Factors are valid for the first 12 months following the bid date.
  2. CCI indices are published monthly. The "base year" for the purposes of this clause is the 12 months prior to the bid date. The "base year index" is determined by summing the monthly CCI indices for each of the 12 months of the "base year" and dividing by 12. The result is the average CCI for the "base year."
  3. The "first adjustment period" for the purposes of the clause is the 12 months following the bid date. The "first period extension index" is determined by summing the monthly CCI indices for the first year and dividing by 12. The result is the average CCI for the "first adjustment period."
  4. The update percentage for the "first adjustment period" is determined by dividing the "first period extension index" by the "base year index." The new adjustment factors are determined by multiplying the update percentage by the original Adjustment Factors.
  5. The update for subsequent periods is determined by the same procedure as described above. The "base year" shall be used for all subsequent years.
  6. All the above computations shall be rounded to four (4) decimal places.
- e. The Non-Prepriced Adjustment Factor shall not be adjusted for the duration of the Contract.
- f. The current Adjustment Factors shall be used for all Job Orders, including Job Orders outside of the Contractor's Region listed in Schedule A.
- g. The cost of expediting services and equipment use fees are not reimbursable.
- h. If the Contractor is required to pay an application fee for any filings related to the Job Order, a fee to obtain a building permit, or any other permit fee to the City of New York or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Non-Prepriced Item to be Without Mark-up. In addition, the City shall not pay a mark-up on Non-Prepriced items listed in the

Specifications as a “Non-Prepriced Item without a Mark-Up” (e.g., temporary storage) and items in the Specifications that clearly state that no mark-up is allowed.

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SIGNATURES

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and the Contractor, have executed FIVE COPIES of this contract, three copies of which are to remain with the Commissioner, one other to be filed with the Comptroller of the City, and the fifth to be delivered to the Contractor.

THE CITY OF NEW YORK

By: \_\_\_\_\_  
Commissioner

CONTRACTOR:

By: \_\_\_\_\_  
AUTHORIZED OFFICER OF THE FIRM OR CORPORATION

(Where Contractor is a Corporation, add):

Attest:

\_\_\_\_\_ (seal)  
SECRETARY

APPROVAL AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY

BY: \_\_\_\_\_  
ACTING CORPORATION COUNSEL

ACKNOWLEDGMENT BY CORPORATION

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_,

before me personally came \_\_\_\_\_

who affirms or being by me duly sworn, did depose and say that he/she resides in

the City of \_\_\_\_\_: that he/she is the \_\_\_\_\_

of the \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of New York, County of Queens ss:

On this \_\_\_\_\_ day of \_\_\_\_\_,

before me personally came \_\_\_\_\_

to me known, and known to be the \_\_\_\_\_ Commissioner of the City of Environmental Protection of The City of New York, the person described as such in and who as such executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as Commissioner for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY PARTNERSHIP

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_,

before me personally came \_\_\_\_\_, to be known

and known to me to be a member of \_\_\_\_\_, the firm described in and which executed the forgoing instrument and he/she acknowledged to me that he/she subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY INDIVIDUAL

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_,

before me personally came \_\_\_\_\_

to be known and known to me to be the same person described and who executed the forgoing instrument and he/she acknowledged to me that he/she executed the same for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

AUTHORITY

MAYORS CERTIFICATE NO: CBX: \_\_\_\_\_ DATED \_\_\_\_\_

BUDGET DIRECTOR'S CERTIFICATE NO: CP/CAS: \_\_\_\_\_ DATED \_\_\_\_\_

APPROPRIATION

COMMISSIONER'S CERTIFICATE

In conformity with the provisions of Section 6-101 of the Administrative Code of the City of New York, it is hereby certified that the estimated cost of the work, materials and supplies required by the within Contract, accounting to:

---

\$ \_\_\_\_\_

Is chargeable to the fund of the City of Environmental Protection Budget Code(s):

\_\_\_\_\_

---

I hereby certify that the specifications contained herein comply with the terms and conditions of the  
FY \_\_\_\_\_ BUDGET

\_\_\_\_\_  
Commissioner of the City of Environmental Protection

COMPTROLLER'S CERTIFICATION

The City of New York \_\_\_\_\_

In pursuance of the provisions of Section 6-101 of the Administrative Code of the City of New York, it is hereby certified that there remains unapplied and unexpended a balance of the above mentioned fund applicable to this Contract sufficient to pay the estimated expense of the executing the same.

\$ \_\_\_\_\_

\_\_\_\_\_  
Comptroller

---



SCHEDULE A  
GENERAL CONDITIONS TO  
NYC HOUSES REHABILITATION PROGRAM CONTRACT  
(INCLUDING GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)

PART I. REQUIRED INFORMATION

<u>CONTRACT VALUE</u>	Requirements contract not to exceed \$30,000,000
<u>INFORMATION FOR BIDDERS</u>  Bid Bond	\$1,500,000
<u>ADDRESS FOR NOTICES TO BE SENT TO THE DEPARTMENT</u>  All notices sent to the Department pursuant to this Contract shall be addressed to the address to the right.	Agency Chief Contracting Officer Department of Environmental Protection 59-17 Junction Blvd Flushing, New York 11373
<u>CONTRACT ARTICLE 3. LOCATION OF THE WORK</u>  Work shall be assigned to the Contractor on Dwellings located in the region indicated to the right. Work may be assigned to the Contractor in additional regions.	Region _____  [To be filled in by DEP.]
<u>CONTRACT ARTICLE 3. TERM</u>	The date of registration pursuant to Charter section 328 through May 31, 2015
<u>CONTRACT ARTICLES 3B, 15, 17 &amp; 24. LIQUIDATED DAMAGES</u>  (a) If the Contractor fails to complete the Detailed Scope of Work for a Job Order within the Job Order Completion Time plus authorized	(a) \$500 for each consecutive calendar day over Job Order Completion Time

Contract

<p>time extensions or if the Contractor, in the sole determination of the Commissioner, has abandoned the Work, the Contractor shall pay to the City the amount indicated to the right.</p> <p>(b) If the Contractor fails to list a Subcontractor and/or to report Subcontractor payments beyond the time frames set forth herein or in the notice from the City, the Contractor shall pay the City the amount indicated to the right.</p> <p>(c) If the Contractor fails to arrive at the Joint Scope Meeting within 30 minutes of the time set forth in the Notice of Joint Scope Meeting, Contractor shall pay the amount indicated to the right.</p> <p>(d) If the Contractor fails to arrive at the appointment to review maintenance and guaranty Work within 30 minutes of the scheduled time, Contractor shall pay the amount indicated to the right.</p>	<p>(b) \$100 per day for each day beyond the time frames set forth herein or in the notice from the City.</p> <p>(c) \$500 for arriving late or not attending the Joint Scope Meeting.</p> <p>(d) \$500 for arriving late or not attending the appointment to review maintenance and guaranty Work.</p>
<p style="text-align: center;"><u>ARTICLE 20</u> <u>PERFORMANCE AND PAYMENT BONDS</u></p>	<p style="text-align: center;">100% of the contract value (\$30,000,000)</p>
<p style="text-align: center;"><u>CONTRACT ARTICLE 22.</u>  (Per Directions Below)</p>	
<p style="text-align: center;"><u>CONTRACT ARTICLE 24.</u> <u>MAINTENANCE &amp; GUARANTY PERIOD</u></p>	<p>1 Year after Final Acceptance of the Contractor's final Job Order</p>
<p style="text-align: center;"><u>CONTRACT ARTICLE 24.</u> <u>SECURITY FOR MAINTENANCE &amp;</u> <u>GUARANTY</u></p> <p>As security for the faithful performance of its obligations, the Contractor, upon filing its Job Order Request, the City shall withhold a sum equal to the percentage of the Job Order price indicated to the right.</p>	<p>1% of the value of the Job Order certified for payment in all Job Order Requests.</p>

<p style="text-align: center;"><u>CONTRACT ARTICLE 75.</u> <u>COMPENSATION TO BE PAID TO</u> <u>CONTRACTOR</u></p> <p>Pursuant to Article 75, for each satisfactorily completed Job Order, the Contractor shall be paid the sum of the Unit Prices multiplied by the Unit Price Adjustment Factor plus the Non-Prepriced Items multiplied by the Adjustment Factor for Non-Prepriced Items.</p>	<p style="text-align: right;">_____ . _____ Unit Price Adjustment Factor</p> <p style="text-align: right;">_____ . _____ Adjustment Factor for Non-Prepriced Items</p> <p>[To be filled in by DEP based on the winning bid.]</p>
---	--

(GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)

PART II. TYPES OF INSURANCE, MINIMUM LIMITS AND SPECIAL CONDITIONS

Note: All certificate(s) of insurance submitted pursuant to Contract Article 22.3.3 must be accompanied by a Certification by Broker consistent with Part III below and include the following information:

- For each insurance policy, the name and NAIC number of issuing company, number of policy, and effective dates;
- Policy limits consistent with the requirements listed below;
- Additional insureds or loss payees consistent with the requirements listed below; and
- The number assigned to the Contract by the City (in the “Description of Operations” field).

Insurance indicated by a blackened box (■) or by X in a □ to left will be required under this contract

Types of Insurance (per Article 22 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<p>■ Commercial General Liability    Art. 22.1.1</p>	<p>\$5,000,000 per occurrence</p> <p>\$10,000,000 per project aggregate applicable to this Contract</p> <p>\$10,000,000 completed operations (required for three years after Final Completion of Contractor’s last Job Order)</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees, with coverage at least as broad as ISO Forms CG 20 10 and CG 20 37, and</p> <p>2. all Homeowners.</p>
<p>■ Workers’ Compensation            Art. 22.1.2            ■ Disability Benefits Insurance    Art. 22.1.2            ■ Employers’ Liability                 Art. 22.1.2</p>	<p>Workers’ Compensation, Employers’ Liability, and Disability Benefits Insurance: Statutory per New York State law without regard to jurisdiction.</p> <p><u>Note:</u> The following forms are acceptable: (1) New York State Workers’ Compensation Board Form No. C-105.2, (2) State Insurance Fund Form No. U-26.3, (3) New York State Workers’ Compensation Board Form No. DB-120.1 and (4) Request for WC/DB Exemption Form No. CE-200. The City will not accept an ACORD form as proof of Workers’ Compensation or Disability Insurance.</p>

<p>■ Commercial Auto Liability      Art. 22.1.3</p>	<p>\$1,000,000 per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
<p>■ Contractors Pollution Liability      Art. 22.1.4</p>	<p>\$3,000,000 per occurrence</p> <p>\$3,000,000 aggregate</p> <p>Additional Insureds:</p> <ol style="list-style-type: none"> <li>1. City of New York, including its officials and employees, and</li> <li>2. all Homeowners.</li> </ol>

SCHEDULE A  
(GENERAL CONDITIONS TO CONSTRUCTION CONTRACT)  
(GENERAL CONDITIONS RELATING TO ARTICLE 22 -- INSURANCE)

PART III. BROKER'S CERTIFICATION

[Note to Contracting Agency: Pursuant to Article 22.3.3 of the Contract, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or certified copies of all policies referenced in the Certificate of Insurance.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

\_\_\_\_\_  
[Name of broker (typewritten)]

\_\_\_\_\_  
[Address of broker (typewritten)]

\_\_\_\_\_  
[Email address of broker (typewritten)]

\_\_\_\_\_  
[Phone number/Fax number of broker (typewritten)]

\_\_\_\_\_  
[Signature of authorized official or broker]

\_\_\_\_\_  
[Name and title of authorized official (typewritten)]

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_



## **REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION**

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau  
212-825-5959**

**or by mail or in person at:**

**DEPARTMENT OF INVESTIGATION  
80 MAIDEN LANE, 17th FLOOR  
NEW YORK, NEW YORK 10038  
Attention: COMPLAINT BUREAU**

**or file a complaint on-line at:**

**[www.nyc.gov/doi](http://www.nyc.gov/doi)**

*All communications are confidential.*

### **THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.



## **HURRICANE SANDY CDBG-DR APPENDIX**

### NOTICE

THIS DOCUMENT CONTAINS CONDITIONS FOR USE WITH PROCUREMENT CONTRACTS AND SUBRECIPIENT AGREEMENTS, ALONG WITH APPENDIX B, WHICH PROVIDE FOR AN ELIGIBLE ACTIVITY FUNDED IN WHOLE OR IN PART BY CDBG-DR FUNDS APPROPRIATED PURSUANT TO THE DISASTER RELIEF APPROPRIATIONS ACT OF 2013 (P.L. 113-2). IT MUST BE ANNEXED TO ALL SUCH CONTRACTS ALONG WITH A LINK TO HUD DOCKET NO. FR056960-N-01 (MAR. 5, 2013) AND APPENDIX B, AND EXPRESSLY MADE A PART OF, AND INCORPORATED BY REFERENCE INTO THOSE CONTRACTS.

## ARTICLE 1. DEFINITIONS

The definitions in Article 1 of Appendix B apply to this Hurricane Sandy CDBG-DR Appendix.

## ARTICLE 2. ADMINISTRATIVE CAP

Pursuant to the Disaster Relief Appropriations Act of 2013 (P.L. 113-2) and Section VI(A)(10)(b) of HUD Docket No. FR056960-N-01, attached, a Subrecipient shall not be reimbursed for general administration costs that exceed five percent.

## ARTICLE 3. FLOOD INSURANCE

Subrecipients shall implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements set forth in Section VI(B)(31) of HUD Docket No. FR056960-N-01.

## ARTICLE 4. CIVIL RIGHTS REQUIREMENTS

Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

## ARTICLE 5. RELIGIOUS ORGANIZATIONS

In addition to the provisions in Article 2(m)(iv) of Appendix B, which cover a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, payment may be authorized for a portion of eligible rehabilitation or construction costs attributable to the non-religious use of a facility that is not used exclusively for religious purposes, pursuant to Section VI(A)(4)(c) of HUD Docket No. FR056960-N-01.

## ARTICLE 6. QUARTERLY REPORTS

The reports required by Article (5)(b) of Appendix B shall be provided by the Contractor or Subrecipient to the City on a quarterly basis, pursuant to Section VI(A)(2)(e) of HUD Docket No. FR056960-N-01.

## ARTICLE 7. CONSTRUCTION STANDARDS

The Contractor or Subrecipient shall comply with the construction standards concerning energy efficiency set forth in section VI(A)(1)(a)(5) of HUD Docket No. FR-5696-N-01.

## ARTICLE 8. PROGRAM INCOME

To the extent deemed necessary by the City, the Program Income provisions set forth in Article 2(1) of Appendix B may be waived and instead the City may apply the alternative program requirements set forth in Section VI(A)(17)(a)-(b) of Docket No. FR056960-N-01, which concern the definition of program income. In such event, the alternative requirements shall be set forth in the Subrecipient Agreement.

## ARTICLE 9. PERFORMANCE REQUIREMENTS AND LIQUIDATED DAMAGES

Contractor and or Subrecipient shall be subject to the performance requirements and liquidated damages set forth in the Agreement.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5696-N-01]**

**Allocations, Common Application, Waivers, and Alternative Requirements for Grantees  
Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in  
Response to Hurricane Sandy**

**Available On-line at**

**[http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG-FR\\_Sandy\\_Notice.PDF](http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG-FR_Sandy_Notice.PDF)**

## **APPENDIX B**

### **NOTICE**

THIS PACKAGE CONTAINS SUPPLEMENTARY GENERAL CONDITIONS FOR USE WITH PROCUREMENT CONTRACTS AND SUBRECIPIENT AGREEMENTS WHICH PROVIDE FOR AN ELIGIBLE ACTIVITY FUNDED IN WHOLE OR IN PART UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 (P.L. 93-383) AS AMENDED. IT **MUST** BE ANNEXED TO ALL SUCH CONTRACTS, AND EXPRESSLY MADE A PART OF, AND INCORPORATED BY REFERENCE INTO THOSE CONTRACTS.

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## ARTICLE 1

### DEFINITIONS

As used in this Contract:

(a) “Act” means Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended.

(b) “Agency” and/or “Recipient” means the entity, or entities, executing this Agreement on behalf of the City of New York.

(c) “City” means the City of New York.

(d) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.

(e) “Contractor” and/or “Subrecipient” means the entity or entities executing this Agreement, other than the Agency.

(f) “Grant” means Community Development Block Grant Program funds provided to the Contractor through the City of New York and by the Federal Department of Housing and Urban Development.

(g) “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(h) “Program” means the New York City Community Development Block Grant Program approved by HUD as the same may from time to time be amended.

(i) “Subcontractor” means any person, firm or corporation, other than employees of the Contractor, or another Subcontractor who is engaged by the Contractor to furnish labor or labor and materials at the site of the work performed under this agreement.

## ARTICLE 2

### FEDERAL CONDITIONS

This Agreement is subject to:

(a) Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended (The Act) and all rules, regulations and requirements now issued or hereafter issued pursuant to the Act; the Agreement may be suspended and/or terminated without liability to the City if the Grant to the City pursuant to the Act is suspended or terminated, and unless and until the City or Agency receives Community Development funds in an amount that is deemed sufficient to enable it to fund this Agreement, the City or Agency is under no obligation to make any payments to the Contractor. In this regard, the Agency is under no obligation to make any payments to the Contractor, and shall not make any such payment, and the Contractor shall not commence performance, until:

- (i) the Agency has received from the City's Office of Management and Budget instructions to proceed, evidencing compliance with the National Environmental Policy Act, as amended, and with regulations of the U.S. Department of Housing and Urban Development, related thereto, found at 24 CFR Part 58, and;
- (ii) the Contractor has been notified of such instructions by the Agency. Furthermore, the Contractor and the City mutually agree that the Contractor shall not advance any funds, from any source without limitation, to pay for costs intended to be paid for under this Agreement prior to the receipt and notification described in this paragraph (a), and the City shall not reimburse the Contractor for any costs incurred in violation of this provision.

(b) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.

(c) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107 which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.

(d) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this agreement. The provisions of this Article 2(d) shall be incorporated in and made a part of all subcontracts executed in connection with this agreement.

(e) Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90-448). Pursuant to 24 CFR § 135.38, the Contractor agrees to the following:

A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Agreement agree to comply with HUD'S regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement

certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

(f) Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This Article 2(f) is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.

(g) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

(h) Consistent with 24 CFR § 570.614, the Contractor warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

(i) The Historic Preservation Act of 1966 (P.L. 89-665; 16 U.S.C. §§ 470 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

(j) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601-4655) and regulations at 49 CFR Part 24.

(k) Uniform Administrative Requirements.

- (i) Subrecipients that are governmental entities, including those that are public agencies or authorities, shall comply with the following:
  - a. Federal Office of Management and Budget (OMB) circular A-87, Cost Principles for State, Local and Indian Tribal Governments;
  - b. Federal Office of Management and Budget (OMB) circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03);
  - c. The sections of 24 CFR Part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, that are set forth in 24 CFR § 570.502(a).
- (ii) Subrecipients, except those which are governmental entities, public agencies or authorities, shall comply with the following:
  - a. Federal Office of Management and Budget (OMB) circular A-122, Cost Principles Non-Profit Organizations;
  - b. In the event that the Contractor is an educational institution, Federal Office of Management and Budget (OMB) circular A-21, Cost Principles for Educational Institutions;
  - c. The sections of 24 CFR Part 84, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, that are set forth in 24 CFR § 570.502(b). The provisions of 24 CFR Part 84 implement OMB circular A-110;
  - d. Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (rev. 6/27/03).
  - e. Execution of a subrecipient agreement.
- (iii) Contractors shall comply with the provisions of 24 CFR Part 85 and 48 CFR Part 31, as applicable.

(l) The Contractor agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of

Community Development Block Grant funds, including 24 CFR § 570.503(b)(3), which provides that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(m) If the Contractor is, or may be deemed to be, a religious or denominational institution or organization operated for religious purposes which is supervised or controlled by or in connection with a religious or denominational institution or organization, the Contractor agrees that in connection with services to be provided under this Agreement:

- (i) it shall not discriminate against any employee or applicant for employment on the basis of religion and shall not limit employment or give preference in employment to persons on the basis of religion.
- (ii) it shall not discriminate against any person applying for such public services on the basis of religion or religious belief and shall not limit such services or give preference to persons on the basis of religion or religious belief.
- (iii) it shall provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services.
- (iv) it shall not use CDBG funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under 24 CFR Part 570. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in 24 CFR Part 570. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property is subject to 24 CFR § 570.200(j)(5).

(n) Executive Order 11246, as amended, and the implementing regulations contained in 41 CFR Chapter 60, as amended, prohibit discrimination in employment due to race, color, religion, sex or national origin during the performance of all Federal or federally assisted contracts.

- (i) During the performance of this Agreement the Contractor agrees as follows:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion or national origin.

c. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other Agreement or understanding, a notice to be provided by the Agency contracting officer, advising the labor union or worker's representatives of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted Construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of this Article 2(n) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

(o) The Contractor agrees that if it enters a Construction subcontract as part of its Agreement with the City, and this Construction subcontract is for an amount more than \$10,000, the notice found at FEDERAL EXHIBIT 1 of this Agreement must be included in that Construction subcontract.

### ARTICLE 3

### ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION

In the event that this Agreement involves Construction work, design for Construction or Construction services, all such work or services performed or administered by the Contractor shall be subject to the following requirements in addition to those set forth in Article 2.

- (a) Federal Labor Standards: The Contractor will comply with the following:
  - (i) The Davis-Bacon Act (40 U.S.C. §§ 3141 *et seq.*): In Construction contracts involving an excess of \$2000, unless exclusively in connection with the rehabilitation of residential property containing fewer than 8 units, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.
  - (ii) Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701 *et seq.*), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction Agreement costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
  - (iii) The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but “permissible” salary deductions.
  - (iv) The more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.
  - (v) The provisions of Article 3(a) of this Agreement shall be included in all subcontracts for work in connection with this Agreement.
- (b) Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000.

#### **Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000.**

- 1. As used in these specifications:
  - a. “Covered area” means the geographical area described in the solicitation from which this Agreement resulted;
  - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Agreement resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Agreement resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period,

and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
  - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction work is performed.
  - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written

- notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### **ARTICLE 4**

##### NONDISCRIMINATION

(a) The Contractor shall not, in any Program or activity receiving funds under this Agreement, discriminate against any person on the grounds of race, color, national origin, religion, sex, age, or disability. The Contractor agrees to comply with provisions of 24 CFR Part 6, 8, and 146.

#### **ARTICLE 5**

##### RECORDS AND AUDITS

(a) Records shall be maintained in accordance with requirements prescribed by HUD and/or the City with respect to all matters covered by this Agreement and retained for at least three years after the City makes final payments and all other pending matters concerning this Agreement are closed.

(b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information, as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:

- (i) Annual Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Annual Performance Report.
- (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased real property.

(c) At any time during normal business hours and as often as the City, the Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

## **ARTICLE 6**

### UNEARNED PAYMENTS

Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor will be returned to the City. All interest on funds advanced to the Contractor will be returned to the City.

## **ARTICLE 7**

### DISBURSEMENT RESTRICTIONS

No money under this Agreement shall be disbursed by the Agency to any Contractor except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR 58.

## **ARTICLE 8**

### DOCUMENTATION OF COSTS

All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Contract, shall be clearly identified and readily accessible.

## **ARTICLE 9**

### BONDING

The Agency must receive a statement from the Contractor's chief fiscal officer or their insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount and

manner consistent with the coverage deemed necessary by the City of New York for its own employees. If the bond is cancelled or coverage is substantially reduced, the Contractor shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor until it has received assurance that adequate coverage has subsequently been obtained.

## **ARTICLE 10**

### ACCOUNTING SYSTEM

The Contractor shall submit to the Agency a detailed description of its accounting, reporting and internal control systems, including but not limited to the procedures for cash receipts, cash disbursements, payrolls, personnel policies, fixed petty cash controls and other systems which are necessary under the circumstances. The Agency shall evaluate and document all systems and only upon acceptance and approval of the accounting, reporting and internal control systems by the Agency, shall funds be disbursed to the Contractor, other provisions of the Agreement notwithstanding.

## **ARTICLE 11**

### COPYRIGHTS

(a) Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

(b) Any reports, documents, data, photographs, deliverables, and/or other materials, including software, produced pursuant to this Agreement (“Copyrightable Materials”), shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior permission of the City. The Department may grant the contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

(c) The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

(d) The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for materials that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the city upon execution of this Agreement.

(e) HUD reserves a royalty-free, nonexclusive, perpetual and irrevocable license to reproduce, publish, display, perform, distribute, or otherwise use, and to authorize others to use, for Federal or State government purposes, the copyright in any Copyrightable Materials developed under or the rights to which are purchased under this Agreement.

(f) If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish or otherwise use such work for City governmental purposes.

## **ARTICLE 12**

### PATENTS

The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Agreement. In addition, any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to HUD for determination by HUD as to whether patent protection on such invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

## **ARTICLE 13**

### SUBCONTRACTORS

(a) The provisions of this Agreement shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor. The Contractor shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor.

(b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor.

(c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor, and the Contractor shall remain responsible therefor.

## **ARTICLE 14**

### SUSPENSION AND TERMINATION

(a) Where the Contractor fails to perform the work satisfactorily as enumerated in the part of this Agreement known as the scope of work, the City may withhold payment, in addition to any other remedy provided for by this Agreement. Where there is failure to comply with the Agreement terms, the City reserves the right to terminate the Agreement. The City further reserves the right to terminate the Agreement for convenience.

(b) The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Agreement if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.

(c) If this Agreement is between the City and a subrecipient, the City may suspend or terminate the Agreement if Subrecipient materially fails to comply with any terms of this Agreement, pursuant to 24 CFR § 85.43, and for convenience, pursuant to 24 CFR § 85.44.

## **ARTICLE 15**

### REVERSION OF ASSETS

(a) At the Contract's expiration, the Contractor shall transfer to the City all Community Development funds on hand at the time of expiration and any accounts receivable attributable to the use of Community Development funds.

(b) Any real property under the City's or the Contractor's control that was acquired in whole or in part with Community Development funds in excess of \$25,000 will be used to meet the national objectives in Section 570.208 or disposed in a manner which results in the Program being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-Community Development funds for acquisition of, or improvements to, the property.

(c) Any real property under the City's control that was improved in whole or in part with Community Development funds in excess of \$25,000 will be used to meet the national objectives in Section 570.208 for a period equal to the life of those improvements. The term shall be determined by the Office of Management and Budget's Office of Community Development. If the City decides to dispose of or change the use of that property so that it no longer continues to meet a national objective, the Program shall be reimbursed in the amount of the current replacement cost of those improvements, divided by the number of years of the life of the improvements, multiplied by the number of years that remain in the life of the improvements.

(d) Any real property under the Contractor's control that was improved in whole or in part with Community Development funds in excess of \$25,000 will be used to meet the national objectives in Section 570.208 for a period of five years after the date of completion of those improvements or disposed in a manner which results in the Program being reimbursed in the amount of the current replacement cost of those improvements.

(e) Title to all equipment in excess of \$150 purchased or leased pursuant to this Agreement with Community Development funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

## **ARTICLE 16**

### SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS

The Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

- (a) Placing qualified small minority businesses and women's business enterprises on solicitation lists;
- (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

## **ARTICLE 17**

### ENVIRONMENTAL PROTECTION

For agreements, subcontracts, and subgrants of amounts in excess of \$100,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33 U.S.C. §§ 1251, *et seq.*) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive

Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act).

## **ARTICLE 18**

### ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).

## **ARTICLE 19**

(a) Hatch Act: The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

(b) Lobbying: The Subrecipient agrees that no funds provided will be used by it or its subcontractors in violation of 24 CFR § 87.100.

(c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 24 CFR §§ 84.42, 85.36, and 570.611.

## **ARTICLE 20**

### BINDING AUTHORITY

If any provision in this Appendix B directly conflicts with any other provision in the Contract, the provision in Appendix B shall be controlling.

Federal Exhibits 1 and 2, are attached to, and made a part of this Appendix B.

Any subcontracts entered into pursuant to this Agreement shall incorporate the following City of New York provisions by reference, which shall be binding on every Subcontractor:

- Investigations;
- Executive Order 50; and
- Conflicts of Interest

**NOTICE TO BIDDERS**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CD FUNDED CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction work in the covered area, are as follows:

**Goals and Timetables for Minorities**

<u>Trade</u>	<u>Goal</u> <u>(percent)</u>
Electricians . . . . .	9.0 to 10.2
Carpenters . . . . .	27.6 to 32.0
Steamfitters . . . . .	12.2 to 13.5
Metal Lathers . . . . .	24.6 to 25.6
Painters . . . . .	28.6 to 26.0
Operating Engineers . . . . .	25.6 to 26.0
Plumbers . . . . .	12.0 to 14.5
Iron Workers (structural) . . . . .	25.9 to 32.0
Elevator Constructors . . . . .	5.5 to 6.5
Bricklayers . . . . .	13.4 to 15.5
Asbestos Workers . . . . .	22.8 to 28.0
Roofers . . . . .	6.3 to 7.5
Iron Workers (ornamental) . . . . .	22.4 to 23.0
Cement Masons . . . . .	23.0 to 27.0
Glazers . . . . .	16.0 to 20.0
Plasterers . . . . .	15.8 to 18.0
Teamsters . . . . .	22.0 to 22.5
Boilermakers . . . . .	13.0 to 15.5
All Other . . . . .	16.4 to 17.5

**Goals and Timetables for Women**

From April 1, 1980 until the present . . . . . 6.9

These goals are applicable to all the Contractor's Construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Agreement, the "covered area" is the City of New York.

## Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.



**Environmental  
Protection**

# **HEALTH AND SAFETY REQUIREMENTS**

**Carter H. Strickland, Jr.**  
Commissioner

**Mary F. Pazan**  
Agency Chief Contracting Officer

**STANDARDIZED DETAILED SPECIFICATION XXXXX  
ENVIRONMENTALHEALTH AND SAFETY REQUIREMENTS  
CONTRACT XX-XXX**

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**Environmental Health and Safety (EHS) Requirements**

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Requirements for the Contractor and its subcontractors to provide their employees a safe and healthful work environment and for performing all work in compliance with all applicable environmental health and safety (EHS) laws, rules, and regulations.
- B. Contractor Duties:
  - 1. The EHS performance of the Contractor and its hired subcontractors is the responsibility of the Contractor. Since an effective and functioning on-site EHS team is an essential element of EHS performance, the Contractor will evaluate the performance of their on-site EHS team on a continuous basis. Where deficiencies are found, the Contractor is expected to take appropriate action up to and including removal of personnel and/or subcontractors where the contract specifications, performance goals, and the Contractor's regulatory responsibilities are not being met.
  - 2. The Contractor will comply with all current Federal, State, City and local EHS laws, rules, and regulations, including all those that become effective during the term of the Contract, related to ensuring health and safety of employees, the protection of property and the environment.

1.02 DEFINITIONS

- A. A "Competent Person" is one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees or the environment, and who has authorization to take prompt corrective measures to eliminate them. A Competent Person has stop work authority.
- B. "Environmental Health & Safety Plan" (EHASP) shall mean the plan developed in accordance with all applicable EHS rules and regulations and these specifications to set forth policies and procedures to control any identified health and safety hazards or environmental impacts. Note, the plan is not to be confused with the Health and Safety Plan required under 29 CFR 1910.120 for Hazardous Waste Operations and Emergency Response (HAZWOPER).
- C. "EHS Representative" is an employee of the Contractor primarily responsible for managing the Contractor's EHS responsibilities in accordance with this Specification.

**DETAILED SPECIFICATION 01356**  
**ENVIRONMENTALHEALTH AND SAFETY REQUIREMENTS**  
**CONTRACT 602**

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- D. “Hazard Analysis” shall mean a written evaluation tool, identifying the tasks to be completed, access and egress, and set up/breakdown under all expected environmental conditions. Also included is the method of work for completing these tasks, associated work hazards, and the corresponding equipment and control methods planned to prevent loss for all contracted work, including that of subcontractors.
- E. “Incident” shall mean an event including, but not limited to, events involving a Contractor or subcontractor employee injury or illness, property damage, near miss, third party injury or illness, or detrimental environmental impact affecting the site, or any impact on the surrounding environment beyond the limits of the site, regulatory noncompliance, or any other health and safety issue as determined by the Project Manager.
- F. “Subcontractor” shall mean a subcontractor directly contracted with the Contractor or anyone other than the Housing Recovery Program (HRP) to perform work as directed by the Contractor. All EHS performance is assignable to the Contractor; therefore all EHS control programs must cover their subcontractors.

1.03 GENERAL REQUIREMENTS

- A. In fulfilling the work of this Contract, the Contractor shall at all times provide safe and healthful working conditions for all employees, including HRP personnel. The Contractor shall comply with all regulations and published recommendations of the New York State Department of Labor (NYSDOL) and all provisions, regulations and recommendations issued pursuant to the Federal Occupational Safety and Health Act (OSHA) of 1970 and the Construction Safety Act of 1969, as amended. All Federal, State and Local environmental laws, rules, and regulations shall be complied with as well as laws, rules, and regulations of other authorities having jurisdiction. Compliance with governmental requirements is mandated by law and considered only a minimum level of EHS performance. Where specific regulations do not adequately control an occupational hazard the Contractor is expected to fulfill its general duty obligations as required by the OSHA. Where regulations are not specific the Contractor shall consider and utilize EHS best practices and reference appropriate EHS and performance consensus standards (e.g., NFPA, ANSI, ASTM, ASME, etc.).
- B. The Contractor shall be responsible for the health and safety of its employees, its subcontractors, the public and all other persons at or about the work site. The Contractor shall be solely responsible for the adequacy of all construction methods, materials, equipment and the safe and environmentally compliant prosecution of the work.
- C. HRP requires a drug and alcohol free, healthful, safe and secure work environment. Contractor employees will report to work in an appropriate mental and physical condition for work. The Contractor will prohibit any

**STANDARDIZED DETAILED SPECIFICATION XXXXX  
ENVIRONMENTALHEALTH AND SAFETY REQUIREMENTS  
CONTRACT XX-XXX**

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- employee or subcontractor from being under the influence of any illegal drug or alcohol while at work, on duty, or operating a vehicle or construction equipment.
- D. Unless otherwise approved, the Contractor shall provide at least one EHS Representative to be present whenever employees are working and should be located so as to be accessible to all work locations. This may require the Contractor to have additional EHS Representatives to allow for coverage of multiple shifts, consistent with the Contract specifications.
  - E. The EHS Representative's qualifications shall be in compliance with Section 1.04(A) of this specification section, submitted to and approved by the HRP Director of Safety.
  - F. The Contractor shall make available, Competent Persons for each work location. Competent Persons shall be responsible for ensuring Safe Work Plans (SWPs) have been prepared for each work location.
  - G. The Contractor's EHS Representative(s) shall be provided an appropriate office on the job site to maintain and keep available EHS records, up-to-date copies of all pertinent EHS laws, rules, regulations and governing legislation, material safety data sheets, etc.
  - H. The Contractor or its subcontractors, shall stop work and initiate immediate corrective action whenever a work procedure or a condition at the work site is deemed unsafe by the Contractor or HRP staff, Competent Persons, Project Manager or designee. All Contractor and subcontractor employees working on site shall report any unsafe or noncompliant work condition(s) immediately to the EHS Representative, Competent Persons, Project Manager or designee. If a stop work order is issued to the Contractor by the Project Manager for unsatisfactory EHS or environmental performance, the Contractor shall not hold HRP liable for any losses associated with the stop work order.
  - I. The Contractor shall prepare a SWP for each work location. The SWP shall contain a hazard analysis, identify the individuals performing the work, the individual preparing the SWP, emergency procedures and emergency contact information.
  - J. The SWP shall be revised whenever work conditions change and expose individuals to previously unidentified hazards.
  - K. The SWP shall be reviewed with individuals performing the work prior to the start of work and any time the SWP is revised.
  - L. The SWP shall be maintained in the work location and made available to all employees working at the work location.
  - M. The Contractors SWP program shall be made available to HRP staff upon request.
  - N. Contractors shall perform a site specific orientation prior to allowing employees work at their assigned work locations. This orientation shall communicate, at minimum, the following:

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1. Hazards of the work location
  2. Incident and emergency reporting and response procedures
  3. Contractor specific EHS requirements
  4. SWP procedures
  5. EHS Representative and Competent Person contact information
- O. This orientation shall be documented for each employee assigned to an HRP work location and submitted to HRP EHS staff upon request.
- P. Toolbox talks or other communication shall be held daily to communicate project specific EHS issues, remind personnel of EHS requirements, or for any other EHS purpose.
- Q. The Contractor's site specific EHS orientation program shall be submitted to the Project Manager and made available to HRP staff upon request.

1.04 QUALIFICATIONS

- A. EHS Representatives shall have a minimum of 5 years of relevant construction experience, 2 years of which were exclusively in construction EHS management and successful completion of the following:
1. 30 Hour OSHA Construction Safety and Health training;
  2. Additional training will be required to meet site specific hazards such as confined space entry, scaffolding, cranes, lead/asbestos etc.
- B. EHS Representatives shall have experience with hazard identification, evaluation and controls, and be knowledgeable of all applicable EHS requirements set forth by governing laws, rules and regulations as well as Best Management Practices.

PART 2 PRODUCTS

2.01 SUBMITTALS

- A. The Contractor shall submit an EHASP to the HRP Safety Manager for review and approval upon issuance of the Notice to Proceed. In no case shall work be allowed to commence without an EHASP, unless approved by the HRP Safety Manager.
1. Initial draft submission of the EHASP shall be provided as one hard copy and one electronic copy (either Word or Acrobat format) to the HRP Safety Manager and the Project Manager.
  2. The EHASP submittal shall be reviewed and comments shall be provided to the Contractor upon completion of the review.
    - a. The Contractor shall work with the Project Manager to address all comments in order to obtain EHASP approval.

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- 3. Upon receipt of final approval, the Contractor shall provide one hard copy and one electronic copy (either Word or Acrobat format) of the EHASP to the Project Manager.
- B. The EHASP shall be available to all of the Contractor's employees working on the project.

2.02           REPORTS

- A. The Contractor shall immediately report to the HRP Safety Manager all incidents involving employee injury and illness, damage to equipment and structures, and any releases or adverse impacts to the environment as specified in the HRP Incident Reporting Protocol. The Contractor shall investigate these incidents and document on the HRP Incident Report Form. Incident investigation reports shall be submitted to HRP Safety Manager staff within 72 hours unless a time extension has been granted.
- B. The Contractor must notify HRP Safety Manager and Project Manager immediately of any regulatory inspections, notices of citations and penalties, Notices of Violation (NOVs), or any other outside agency violations. In addition, the Contractor shall furnish to the Project Manager a copy of all correspondence from OSHA, NYSDEC, DOB or any other government regulatory agency, within one day of receipt, which may include employee complaints, notices of citations and penalties, environmental NOVs, etc.

2.03           EHS EQUIPMENT

- A. The Contractor shall provide the proper EHS and rescue equipment, adequately maintained and readily available, for any foreseeable contingency for all employees or situations under the Contract during the performance of the work under the Contract. This equipment may include but is not limited to: proper fire extinguishers, first aid supplies, safety ropes and harnesses, stretchers, atmospheric monitoring equipment to monitor for oxygen, carbon monoxide, hydrogen sulfide, flammable/combustible gases and vapors, toxic vapors, spill pallets, spill cleanup equipment, etc. Spill kits must list contents and be sized to contain a worse case spill.
- B. All equipment should be stored in protected areas and maintained and calibrated as per the manufacturer's recommendations. A log shall be maintained indicating who checked the equipment, when it was checked, and that it was acceptable. Equipment that requires calibration shall have copies of dated calibration certificates on site.
- C. Substitute environmental, safety and rescue equipment must be provided while primary equipment is being serviced or calibrated.

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2.04            PROTECTIVE EQUIPMENT

- A.        All personnel employed by the Contractor or any visitors entering the job site shall be required to wear appropriate personal protective equipment required for that Contract as specified in the SWP and the HRP Policies and Procedures. At the Project Manager's request, the Contractor, its subcontractors and visitors shall be removed from the work location if they fail to comply with this or any other EHS requirement. The Contractor shall continuously provide all necessary personal protective equipment as requested by the Project Manager for all designated representatives.

PART 3        EXECUTION

3.01            EHS STAFF DUTIES

- A.        EHS Representatives and Competent Persons are responsible for ensuring Contractor employees perform work safely and in an environmentally compliant manner.
- B.        EHS Representatives and Competent Persons are responsible for performing all tasks/activities necessary to achieve the highest degree of safety and environmental compliance that the nature of the work permits.
- C.        EHS Representatives and Competent Persons are also responsible to perform the following:
  - 1.        Determine that operators of specific equipment are qualified by training, certification and/or experience before they are allowed to operate such equipment. Ensure documentation of licenses, certifications and training by the approved agencies, i.e. OSHA, NYC DOB, NYC Fire Department, etc. are readily available and current, prior to start of work.
  - 2.        Post all appropriate notices regarding EHS regulations at site location(s), which afford maximum exposure to all personnel at the job site.
  - 3.        Post appropriate instructions and warning signs in regard to all hazardous areas or conditions which cannot be eliminated. Identification of these areas shall be based on experience, site surveillance, and severity of hazard. Such signs shall not be used in place of appropriate workplace controls.
  - 4.        HRP staff and their designees may perform both announced and unannounced audits of the Contractor's assigned work locations. The Contractor, if requested, shall develop and implement a plan detailing corrective actions necessary to mitigate the presence of noncompliant conditions and actions following incidents, citations,

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- NOVs, or identification of patterns of noncompliant conditions and acts.
5. Notify the Project Manager and HRP Safety Manager immediately of all inspections by regulatory agencies, and submit to the Project Manager and HRP staff any copies of EHS reports, citations, and NOVs from regulatory agencies and insurance companies within one workday of receipt of such reports.
  6. Provide and document appropriate site specific orientation to employees, visitors, and subcontractors on communication of recognized hazards that are present at and surrounding the project.

END OF SECTION

# NYC HRP Contractor EHS Responsibilities

- Serve as the single point of contact for all projects regarding environmental, health and safety (EHS) issues.
- Submit a project environmental, health and safety plan (EHASP) to NYC HRP EHS staff for review and acceptance. The EHASP shall include hazard control programs (e.g., fall protection, ladder safety, electrical safety, etc.) and shall be revised as necessary to reflect changes in the program or work conditions.
- Review and approve all *Safe Work Plans (SWPs)* submitted for every project (send copy to NYC HRP EHS at EHS@recovery.nyc.gov).
- Ensure *Job Hazard Analyses (JHAs)* and *Hazard Identification Checklists* within the *SWPs* accurately reflect the hazards for all work activities, particularly those of higher risk.
- Ensure employees and subcontractors update their *SWP* as necessary to accommodate project changes and to provide workers with an effective hazard analysis of their work areas.
- Provide the appropriate Personal Protection Equipment (PPE) based on the *SWP* (as identified in the *EHS Equipment List*) and workers are adequately trained to use equipment.
- Ensure employees and subcontractors are qualified through training to perform assigned tasks.
- Communicate with employees and subcontractors daily as to the progress of their activities and identify hazards of upcoming work so appropriate EHS resources are provided.
- Conduct EHS inspections of construction work using the *EHS Inspection Checklist* as required to ensure subcontractor compliance with the *SWP* (send copy to NYC HRP EHS at EHS@recovery.nyc.gov).
- Report all incidents, accidents, spills and other emergencies to NYC HRP EHS at EHS@recovery.nyc.gov using the *Incident Reporting Protocol* within 24 hours.
- Provide documentation when requested by NYC HRP EHS on all serious incidents and prepare an investigation report using the *Incident Report Form* identifying root causes and corrective actions within 72 hours.
- Instruct employees and subcontractors to correct noncompliant conditions and issue stop work orders when imminent danger is observed, or in response to an incident.
- Ensure corrective actions are implemented by employees and subcontractors following inspections, incidents and releases.
- Provide Toolbox Talks to all job sites based on Lessons Learned from noncompliance reports, incidents, and releases.
- Coordinate emergency response activities for the projects in coordination with NYC HRP EHS and regulatory authorities when necessary.
- Provide recommendations on EHS management and resources to NYC HRP EHS to assist in continuously improving overall EHS performance.

# NYC HRP Incident Reporting Protocol

**Prime Contractors shall report the following to NYC Housing Recovery Program EHS following an incident:**

- Fatality or hospitalization of one or more workers
- OSHA Recordable injury or illness (typically, these are incidents requiring medical treatment beyond first aid, result in an employee's duties being restricted, or the employee cannot immediately return to work)
- Fires
- Incident causing property damage (> \$1,000) or has impact upon the project schedule
- Incident requiring reporting to the DOB, OSHA, FDNY, DEC, NRC, etc.
- Release of ≥ 5 gallon of petroleum product, or  
Release of ≥ the reportable quantity (RQ) of a substance (refer to [www.dec.ny.gov/regulations/2634.html](http://www.dec.ny.gov/regulations/2634.html))
- Crane, hoist, or other heavy equipment incident that does not result in an injury or serious damage as identified above

## Emergency Notification Protocol

NYC HRP Prime Contractors will first verify that the appropriate 911/emergency responder notifications have been made. Prime Contractors will obtain basic information about the emergency and immediately call the contacts below

1. NYC HRP 24-hour Emergency Notification Telephone at 866-382-7258
2. NYC HRP EHS contact at *(to be provided)*
3. The New York State Department of Environmental Conservation (DEC) generally applies the federal RQs for hazardous substances and also provides specific guidelines for reporting small petroleum releases (i.e., reporting is not required if <5 gallons, contained and under control, has not and will not reach the state's water or any land, and the release is cleaned up within 2 hours of discovery). All DEC reportable petroleum releases (releases not meeting the conditions above) and hazardous substance releases (except certain incidental releases) must be reported to the DEC hotline (1-800-457-7362) by the Prime Contractor.
4. If hazardous materials are involved, DEP Division of Emergency Response and Technical Assessment (DERTA) at 718-595-4646

The Prime Contractor will follow up as soon as possible, but not later than 24 hours with an email. The subject line of the email will read "NYC HRP Emergency Notification – (Project/Site Name, Contract Number, Subcontractor)." The information provided shall include the following:

- Brief description of the incident
- Location, time and date of event
- Contract number and Subcontractor involved
- Number of persons injured and severity of injuries
- Chemical or petroleum material released (for environmental releases)
- Duration and estimated quantity of material released (for environmental releases)
- Estimated environmental impact (for environmental releases)
- Names, trades of injured workers
- Name and location of the medical facility where the injured persons were taken

# NYC HRP Incident Reporting Protocol

- Prime Contractor's call-back telephone number and the name of contact person at the site if different from Prime Contractor
- Name and title of the person reporting
- Name, title, and contact number of person for additional information (if different)
- Any other information that may be deemed important

**Note:** *The email should be sent within 24 hours with basic information pertaining to the incident (identified in the information above). A follow up email providing an update of the emergency should be sent as additional information becomes available.*

1. E-mail the report to [EHS@recovery.nyc.gov](mailto:EHS@recovery.nyc.gov), and cc
  - Leigh Mulroy: [LMulroy@dep.nyc.gov](mailto:LMulroy@dep.nyc.gov)
  - Chris Golden: [CGolden@dep.nyc.gov](mailto:CGolden@dep.nyc.gov)
  - Neil Feldscher: [NFeldscher@dep.nyc.gov](mailto:NFeldscher@dep.nyc.gov)
2. If hazardous materials are involved, fax the report to DEP DERTA at 718-595-4690

## Incident Investigation

Once the injured workers have been taken care of and initial notifications have been made, the Prime Contractor will complete the Incident Report Form and forward to NYC HRP EHS at [EHS@recovery.nyc.gov](mailto:EHS@recovery.nyc.gov) within 72 hours following the incident (unless additional time is requested and granted by NYC HRP EHS).

## Regulatory Notifications

Contractors must notify OSHA (212-337-2339 or 800-321-6742) within 8 hours of a fatality or hospitalization of 3 or more workers.

The NYC DOB requires notifications of workplace accidents and any incident involving a crane or scaffolding equipment.

## New York City Reporting

A reportable release in one of the five boroughs of New York City must be reported to DEP DERTA via DEP Emergency Communications Center 24-hour/day number (212-689-1620). A release is "reportable" whenever the quantity released exceeds the New York City "Spill Bill" RQ or "whenever release of a hazardous substance or mixture of substances in an amount less than a reportable quantity creates a risk or danger to the public health, welfare, or the environment" (15 RCNY 11-04). The NYC RQs are generally lower than the federal RQs, but some federally reportable substances are not on the city list. DERTA recommends notification if you are unsure of whether to report. Telephone notification is required as soon as possible. Written notification must be made to DERTA within 1 week.

## New York State Reporting

DEC generally applies the federal RQs for hazardous substances and also provides specific guidelines for reporting small petroleum releases (i.e., reporting is not required if <5 gallons, contained and under control, has not and will not reach the state's water or any land, and the spill is cleaned up within 2 hours of discovery). All reportable petroleum spills and most hazardous substance spills must be reported to the NYSDEC hotline (1-800-457-7362). Section 1.1 of the NYSDEC Spill Guidance Manual summarizes state and federal initial notification requirements ([www.dec.ny.gov/regulations/2634.html](http://www.dec.ny.gov/regulations/2634.html) or, if the link has changed, search the

## NYC HRP Incident Reporting Protocol

DEC web site for document title). The DEC will advise whether a follow-up written report is required and when it must be submitted.

### **Federal Reporting — National Response Center**

The National Response Center (NRC) (1-800-424-8802) maintains an Operations Call Center 24 hours per day, 7 days per week and 365 days per year, at which all information is received via a toll-free number, entered directly into an on-line database system and electronically disseminated as part of the National Response System. The NRC is the single contact point for reporting all federally reportable pollution incidents. Calling the toll-free number fulfills nearly all federal requirements for reporting oil and chemical spills, spills of nuclear material, spills of chemical and biological warfare agents, train derailments, and pipeline spills. The following are thresholds that require a call to the NRC:

- Oil Spills: An oil spill from a vessel or facility operating in or along U.S. navigable waters.
- Chemical Spills: All spills of hazardous substances (including radionuclides) exceeding RQs (Table 302.4 of 40 CFR Part 302).
- Releases above the RQ require immediate notification by phone and submittal of a follow-up written report as soon as practicable

# NYC HRP EHS Incident Report Form

Select which of the following is being reported:

- Injury or work-related illness     
  Regulatory event     
  Property damage     
  Environmental Release

## General Information

Name of individual reporting the event:	_____
Phone number of event contact person:	_____
Prime Contractor name:	_____
Prime Contractor contact information:	_____
Contract # :	_____
Email of event contact person:	_____

## Individual involved and their company (for work related injuries)

Name of person:	_____	Company:	_____
Date of Birth:	_____	Project Hire Date:	_____
		Occupation:	_____
Hours worked prior to event:	_____		

## Event Information

Location of event:	_____
Time of event:	_____
Date of event:	_____
Individuals injured and the description of those injuries below:	
Description of injuries	_____
Chemical/Petroleum Material Release (for environmental releases)	_____
Duration and quantity of material released (for environmental releases)	_____
Estimated environmental impact (for environmental releases)	_____

# NYC HRP EHS Incident Report Form

Event Information					
Name of the medical facility where the injured person(s) was taken:					
_____					
Location of the medical facility where the injured person(s) was taken:					
_____					
Describe the event (be detailed - use extra paper as needed)					
Fatality <input type="checkbox"/>	Lost Work Case <input type="checkbox"/>	Medical Treatment <input type="checkbox"/>	Restricted Case <input type="checkbox"/>	First Aid Case <input type="checkbox"/>	OSHA Recordable <input type="checkbox"/>
DEC/NRC/DERTA Reportable Environmental Release <input type="checkbox"/>					
Description:					

Actions Immediately Implemented at the Time of Incident
_____

Contributing Factors and Root Causes (use space as necessary)	
Contributing Factor or Root Cause	Description
Contributing Factor	
Root Cause	
Root Cause	
Root Cause	

# NYC HRP EHS INSPECTION CHECKLIST

General Information	
Individual performing inspection:	_____
Company/representing:	_____
Phone # and email address of individual performing inspection:	_____
Address of project being inspected:	_____
Contractor(s) performing work:	_____

Program Management			
Inspection Criteria	Yes	No	Comments
Has a Safe Work Plan (SWP) been prepared specifically for the work location?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the SWP specific to activities being performed at the work location?	<input type="checkbox"/>	<input type="checkbox"/>	
Have competent persons been identified where required by OSHA? For example: <ul style="list-style-type: none"> <li>• Ladders</li> <li>• Fall Protection</li> <li>• Electrical Safety</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
Are Toolbox Talks being performed to communicate hazards of work activities to employees?	<input type="checkbox"/>	<input type="checkbox"/>	
Have employees been provided a means of communication in case of emergency for reporting incidents, fires, releases, etc.?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the nearest hospital and its location been identified and communicated to employees in the event of an emergency?	<input type="checkbox"/>	<input type="checkbox"/>	

Health and Safety Information			
Inspection Criteria	Yes	No	Comments
Have employees been provided minimum PPE (i.e. hard hats, glasses, shoes, vests, gloves, hearing protection)	<input type="checkbox"/>	<input type="checkbox"/>	

EHS Inspection Checklist

Health and Safety Information			
If respiratory protection is required, have employees been medically evaluated and fit-tested for use?	<input type="checkbox"/>	<input type="checkbox"/>	
Are power tools and other temporary wiring equipped with Ground Fault Circuit Interrupters?	<input type="checkbox"/>	<input type="checkbox"/>	
Have employees been provided with safe access to work areas either through platforms, ladders, scaffolds, lifts, etc.?	<input type="checkbox"/>	<input type="checkbox"/>	
Are work areas adequately illuminated?	<input type="checkbox"/>	<input type="checkbox"/>	
Have work areas been decontaminated from floodwater and other biological hazards (i.e. molds, fungi) or have employees been provided with additional PPE to prevent skin contact?	<input type="checkbox"/>	<input type="checkbox"/>	
Have employees been provided potable water and means for cleaning their hands/skin?	<input type="checkbox"/>	<input type="checkbox"/>	
If excavation work is required, have utilities been identified prior to excavation operations?	<input type="checkbox"/>	<input type="checkbox"/>	
Are excavations being inspected by a competent person and protective systems provided for excavations > 5 feet?	<input type="checkbox"/>	<input type="checkbox"/>	
Has fall protection been provided for fall hazards > 6 feet?	<input type="checkbox"/>	<input type="checkbox"/>	
Have sources of hazardous energy been controlled (locked and tagged out) to prevent unsafe exposure to employees?	<input type="checkbox"/>	<input type="checkbox"/>	

Environmental Considerations			
Inspection Criteria	Yes	No	Comments
Has the project received an asbestos inspection certifying materials are non-asbestos containing or have asbestos containing materials been abated prior to the start of work?	<input type="checkbox"/>	<input type="checkbox"/>	
Are materials being stored and contained in appropriate containers?	<input type="checkbox"/>	<input type="checkbox"/>	

## EHS Inspection Checklist

<b>Environmental Considerations</b>			
Have debris containers been provided to safely store materials being disposed?	<input type="checkbox"/>	<input type="checkbox"/>	
Are containers labeled to indicate their contents?	<input type="checkbox"/>	<input type="checkbox"/>	
Have spill kits been provided for cleaning up spills?	<input type="checkbox"/>	<input type="checkbox"/>	
Have spills been cleaned up (and reported, if necessary) upon discovery?	<input type="checkbox"/>	<input type="checkbox"/>	
Has standing water been removed from work areas?	<input type="checkbox"/>	<input type="checkbox"/>	
Are material safety data sheets (MSDSs) provided or accessible in a known location for hazardous substances being brought into work locations?	<input type="checkbox"/>	<input type="checkbox"/>	
Have contractors identified and characterized waste streams to ensure proper disposal?	<input type="checkbox"/>	<input type="checkbox"/>	
Has secondary containment been provided for containers storing petroleum and chemical substances in quantities > 5 gallons?	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Training</b>			
Inspection Criteria	Yes	No	Comments
Have employees been provided an EHS orientation relevant to the hazards of the work being performed?	<input type="checkbox"/>	<input type="checkbox"/>	
Do employees possess training as required by regulatory authorities (e.g. OSHA, DOB, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	
Was orientation/training provided in a language capable of being understood by the trainee?	<input type="checkbox"/>	<input type="checkbox"/>	

# NYC HRP Safe Work Plan

Contractor Name: \_\_\_\_\_  
Contract No.: \_\_\_\_\_

Project Name: \_\_\_\_\_

Work Location (if possible, provide street address): \_\_\_\_\_  
\_\_\_\_\_

Projected Job Start Date: \_\_\_\_\_ Projected Job Finish Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_  
Phone: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

Prime Contractor Reviewed:  
Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
Company: \_\_\_\_\_ Date: \_\_\_\_\_

All Subcontractors working at an NYC HRP location must develop a written SWP for each work site, before beginning operations. A copy of this plan must be kept on site at all times.

## **PART A: SAFE WORK PLAN ACKNOWLEDGMENT FORM**

All Subcontractor personnel involved on this job will be briefed on the contents of this plan, and given the opportunity to question any procedures.

### **PLAN ACKNOWLEDGMENT:**

I hereby acknowledge that I have read, understand and accept the conditions outlined in this SWP and I agree to perform work on this task in accordance with this plan, safe work practices, and OSHA regulations.

Company Name: \_\_\_\_\_

Field Supervisor: Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Employee Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PART B:**  
**JOB HAZARD ANALYSIS (JHA)**

**SCOPE of WORK:** Describe the scope of work at the specific location. Include methodology for accomplishing each task.

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**PROJECT AREA:** Describe the project location and area. Include unique features or concerns and a site map if needed.

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**MAIN POTENTIAL HAZARDS:** Identify and evaluate all major environmental, safety and health hazards that relate to the work activity.

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**MAIN PROPOSED CONTROLS:** Work practices and/or emergency procedures that will be used to ensure the safety of workers, the public, other on-site personnel, and property against the main hazards identified above.

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**TRAINING/HAZARD COMMUNICATION:** This should describe the training program designed for the job site to ensure that workers receive the training to work safely on that particular activity. Training should be designed based on the JHA and specific hazards identified in the Hazard ID Checklist below.

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**SAMPLING AND MONITORING PLAN:** Describe plan to identify and monitor inhalation hazards, noise, skin, ingestion hazards if needed.

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**SPILL REPORTING, CONTAINMENT & WASTE MANAGEMENT PLAN:**  
Describe environmental site control measures, spill reporting and containment procedures and hazardous waste management, if applicable. Include SOPs for sampling, managing, and handling drums and containers. Include hazard communications procedures.

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**HAZARD IDENTIFICATION CHECKLIST**

Yes	No	N/A	Hazard	Control Measure*
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Electrical Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	High Voltage Electricity (> 600V)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Carbon Monoxide	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Confined Spaces	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chemicals or Flammables	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Traffic Control	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ladders	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Hazardous Energy (LO/TO)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Material Handling	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Aerial lifts	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sanitation	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scaffolding	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Spills or Leaks	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Demolition	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Power Tools	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pneumatic Tools	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Hand Tools	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Biological Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Egress	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Petroleum Products	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Fall Protection (Heights > 6')	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Utility Service Interruption (Area Clearance Req'd)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Interruption of any Safety System Operation (Area clearance Req'd)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Materials	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lead Contained Materials	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mold and Fungi	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Eye Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Noise	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Head Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Foot Hazard	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Face Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Hand Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Respiratory Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Special PPE.	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other _____	

\* Control measure - engineering controls (e.g. machine guards, ventilation), administrative controls (e.g. procedures, training) and/or personal protective equipment.

**OTHER POTENTIAL HAZARDS:** Describe additional potential hazards that may or may not be included in the table above.

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**PROPOSED CONTROLS:** Work practices, personal protective equipment, training, and /or emergency procedures that will be used to ensure the safety of workers, and on-site personnel, against the hazards identified above.

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**PART C:**  
**EMERGENCY ACTION/FIRE PREVENTION PLAN**

This section of the SWP describes potential emergencies at this site, procedures for responding to those emergencies, roles and responsibilities during emergency response, and training that workers must receive in order to follow emergency procedures. This section also describes the provisions this site has made to coordinate emergency efforts.

**NEAREST HOSPITAL:** \_\_\_\_\_  
**DIRECTIONS TO HOSPITAL** *(or attach a map):* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**EVACUATION PROCEDURES:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FACILITY ASSEMBLY AREAS:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTIFICATION PROCEDURES**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**List of Hazardous Chemicals Brought on Site by Contractor:**

Name of Chemical	MSDS on site

## **PART D:**

### **EHS ORIENTATION OUTLINE**

Contractors shall communicate information regarding the hazards of activities that are being performed. Hazards and hazard controls shall be identified through the project *Environmental, Health and Safety Plan (EHASP)* and *Safe Work Plans (SWPs)*. An EHS orientation shall be performed for employees prior to starting work. This EHS orientation, at a minimum, shall include training on the EHASP and an overview of the following:

1. Electrical Safety
  - a. Electrical hazards
  - b. Power line safety
  - c. Extension cord and powered equipment safety
  - d. Ground fault circuit interrupters
  
2. Generator Safety
  - a. Hazards associated with generator use (e.g. electricity, fires)
  - b. Carbon monoxide poisoning
  - c. Fire hazards
  - d. Noise and vibration hazards
  - e. Grounding requirements for portable generators
  
3. Personal Protective Equipment
  - a. Minimum PPE requirements
  - b. Specialized PPE
  - c. PPE use and limitations
  - d. Maintenance and storage considerations
  
4. Asbestos and lead hazards
  - a. How exposure can occur
  - b. Major elements of OSHA's asbestos and lead standards
  - c. Respiratory protection
  
5. Mold
  - a. Health effects of mold exposure
  - b. How to recognize mold
  - c. Preventing mold growth
  - d. General cleanup procedures
  
6. Spill prevention and response
  - a. Secondary containment
  - b. Spill reporting and cleanup procedures

## **PART D:**

### **EHS ORIENTATION OUTLINE**

7. Waste disposal
  - a. Characterization of wastes
  - b. Containerization and labeling requirements
  - c. Disposal procedures
  
8. Fall protection
  - a. Where fall protection is required
  - b. Proper selection, use, and maintenance of fall protection systems
  - c. Personal fall arrest systems
  - d. Guarding of floor and wall openings
  
9. Other hazards identified as part of the EHASP or SWPs (e.g. power tool safety, lockout/tagout, excavation safety, etc.).

## **PART E:**

### **EHS EQUIPMENT LIST**

Contractors performing work as part of Hurricane Sandy recovery efforts should be capable of providing employees with the following types of equipment:

- Personal Protective Equipment (PPE)
  - Hard hats
  - Safety glasses
  - Gloves (based on activities being performed)
  - High visibility vests (when working near vehicular traffic)
  - Shoes (protective toe where crushing hazards exist)
  - Hearing protection (when working with power tools and noise > 90 dBA)
  - Respirators (where permissible exposure limits are exceeded)
  - Fall protection harnesses and lanyards (personal fall arrest systems)
  - Tyvek suits
  
- Spill cleanup kits
- Ground fault circuit interrupters (GFCIs)
- Voltage testers
- Locks/tags and lockout devices
- Gas detection equipment (e.g. carbon monoxide detectors)
- Debris containers (including heavy duty trash bags)
- Container labels identifying contents
- Caution tape and other hazard markings
- Flashlights
- Batteries
- Communication equipment (i.e. radios, cell phones)
- Potable Water
- Hand Sanitizer
- Decontamination equipment

NYC HRP minimum PPE requirements for all job sites at all times:

- Hard Hat
- Safety glasses
- Work boots
- Appropriate work gloves



**Environmental  
Protection**

## **TRIPARTY AGREEMENT**

**Carter H. Strickland, Jr.**  
Commissioner

**Mary F. Pazan**  
Agency Chief Contracting Officer

59-17 Junction Boulevard, Flushing, New York 11373

**AGREEMENT**

THIS CONTRACT, made and entered into \_\_\_\_\_, 2013, by and between the City of New York (“City”), acting by and through the Department of Environmental Protection (the “Department” or “DEP”), located at 59-17 Junction Blvd, Flushing, New York 11373 and \_\_\_\_\_ (the “Contractor”), located at \_\_\_\_\_ and \_\_\_\_\_ (the “Homeowner”), located at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, pursuant to an agreement between the City and the Homeowner (the “Grant Agreement”), the Homeowner is receiving benefits from the NYC Houses Rehabilitation Program (the “HRP”) for the rehabilitation the property described in Article II (the “Dwelling”), which was damaged by Hurricane Sandy; and

WHEREAS, pursuant to a contract between the City and the Contractor (the “HRP Construction Contract”), the City directed the Contractor, to perform Work on the Dwelling;

NOW THEREFORE, the parties to this Contract, in consideration of the mutual agreements contained herein, agree as follows:

**ARTICLE I: DEFINED TERMS**

1. “**Contract**” includes this document, the Grant Agreement, the HRP Construction Contract, the Job Order, and Supplemental Job Orders, all incorporated by reference.
2. “**Job Order**” is the attached document that sets forth the Detailed Scope of Work for the Dwelling, the Job Order Completion Time, and the price to be paid by the City for the Work.
3. “**Occupants**” means the persons and companion animals/pets residing in the Dwelling.
4. “**Supplemental Job Order**” means a Job Order issued to add or delete work from an existing, related Job Order.
5. “**Unit**” means the Dwelling if the Dwelling is a one-family home or the separate living quarters if the Dwelling is a two-, three-, or four-family home.
6. “**Work**” means all services required to complete the Job Order and additional services included in Article 2.1.40 of the HRP Construction Contract.

**ARTICLE II: TIME & LOCATION**

1. **Dwelling.** The Dwelling is located at \_\_\_\_\_ and includes the building(s) and land at such address.
2. **Term.** The term shall commence upon the date above and end upon Final Acceptance by the City (“Term”).
3. **Job Order Completion Time.** The Contractor shall begin the Job Order Work on the following date \_\_\_\_\_; and complete the Job Order Work in \_\_\_\_\_ calendar days after commencement of the Term (the “Job Order Completion Time”), TIME BEING OF THE ESSENCE. If the City approves a Supplemental Work Order or grants a Time Extension pursuant to the HRP Construction Contract the Contractor may be allowed additional calendar days to complete the Work after the Job Order Completion Time.
4. **Maintenance Period.** Pursuant to the HRP Construction Contract and upon direction by the City, Contractor shall repair or replace any Work in which defects of materials or workmanship may appear or to which damage may occur because of such defects for one year after the Term except as provided in Article III(6). Homeowner shall notify City if such maintenance work is required. The City reserves the right to direct a different contractor to perform the Work during the Maintenance Period.
5. **Relocation Dates.** The Homeowner shall relocate and shall cause its Occupants (including animals) to relocate for the following dates while Work is performed:
  - (a) Unit #1: From \_\_\_\_\_ to \_\_\_\_\_
  - (b) Unit #2: From \_\_\_\_\_ to \_\_\_\_\_
  - (c) Unit #3: From \_\_\_\_\_ to \_\_\_\_\_
  - (d) Unit #4: From \_\_\_\_\_ to \_\_\_\_\_

The Homeowner acknowledges that the City may grant an Extension of Time to complete the Work or approve a Supplemental Work Order that changes the Job Order Completion Time pursuant to the HRP Construction Contract. The City shall promptly notify that Homeowner of such actions and the notice shall state whether the Homeowner and/or Occupants must continue to be relocated during such Work.

6. **Personal Property Removal Dates.** The Homeowner shall remove vehicles and other obstructions and shall cause its Occupants to remove vehicles and other obstructions from the Dwelling during the Term. The Homeowner shall remove and shall cause its Occupants to remove the personal property described in Article III(3) from the rooms designated below by the following dates:
  - (a) Unit #1: Date \_\_\_\_\_ Rooms: \_\_\_\_\_
  - (b) Unit #2: Date \_\_\_\_\_ Rooms: \_\_\_\_\_

(c) Unit #3: Date\_\_\_\_\_ Rooms:\_\_\_\_\_

(d) Unit #4: Date\_\_\_\_\_ Rooms:\_\_\_\_\_

**ARTICLE III: HOMEOWNER’S RIGHTS & DUTIES**

1. **Construction Cooperation.** Homeowner shall cooperate and shall cause the Occupants to cooperate fully with the Contractor and the City with respect to completing the Work. The Homeowner shall not direct the Work. The Homeowner shall not enter and shall prohibit the Occupants from entering the working areas designated by the Contractor. The Contractor may immediately suspend the Work if the Homeowner’s or Occupants’ failure to comply with this section is a risk to health or safety or interferes with the Work.
2. **Access and Utilities.** Homeowner shall provide access and keys to the Dwelling to the Contractor and access by the City to the Dwelling for the Term. Work may be performed on days, nights, and weekends, as allowed by law. Homeowner shall provide access to water, power, and other utilities to the Contractor, where service is available and active in the Dwelling.
3. **Removal of Personal Property.** Homeowner shall identify and remove and shall cause Occupants to identify and remove personal property (not including furniture) that is valuable, fragile, or may be damaged no later than the dates in Article II(6). If necessary, the Contractor may remove additional items as the Work progresses and store them in another area of the Dwelling. The personal property (including furniture) that the Contractor, Homeowner and Occupants shall remove are listed in Attachment 2.
4. **Detailed Scope of Work.** Homeowner reviewed and accepts the Detailed Scope of Work attached to this Contract as Attachment 1. Homeowner shall not request changes to the Detailed Scope of Work after signing this Contract. The Homeowner acknowledges that the City may grant an Extension of Time to complete the Work or approve a Supplemental Work Order that changes the Job Order Completion Time. The City shall promptly notify that Homeowner of such actions and the notice shall state whether the Homeowner and/or Occupants must relocate during such Work.
5. **No Additional Work.** Homeowner shall not request the Contractor to perform additional work that is not in the Job Order, for example, installing items purchased by the Homeowner.
6. **Permission to Use Completed Work.** Upon completion of a discrete item of the Work, the Homeowner may request permission from the Contractor to use the completed item. Contractor may authorize use of such item pursuant to Article 16 of the HRP Construction Contract, such authorization not to be unreasonably withheld. The Contractor shall be relieved of its duty to protect such item of Work. The maintenance and guarantee obligation on such Work shall begin on the date of such authorization.

**ARTICLE IV: CONTRACTOR'S RIGHTS & DUTIES**

1. **Performance of Work/Compliance With HRP Construction Contract.** Contractor shall perform the Work in the Job Order and comply with the HRP Construction Contract, including performing Work during the maintenance and guaranty period.
2. **Removal and Storage of Furniture.** If required in the Job Order, Contractor shall remove and securely store furniture and other large objects at the location and for the dates listed below:
  - (a) Unit #1: Dates \_\_\_\_\_ Location: \_\_\_\_\_
  - (b) Unit #2: Dates \_\_\_\_\_ Location: \_\_\_\_\_
  - (c) Unit #3: Dates \_\_\_\_\_ Location: \_\_\_\_\_
  - (d) Unit #4: Dates \_\_\_\_\_ Location: \_\_\_\_\_

Contractor shall provide the Homeowner with reasonable access to such storage. Contractor shall restore furniture and other large objects prior to submitting the Job Order Request for Payment pursuant to Article 41 of the HRP Construction Contract.

3. **Warranties and Instruction Manuals.** Contractor shall provide Homeowner with certificates of warranties, instruction manuals, and other documents specified in the Job Order at the inspection prior to Final Acceptance (the "Final Inspection").
4. **Subcontractors.** Contractor shall cause its subcontractors to comply with this Contract and shall attach a copy of this Contract to all subcontracts for Work on this Dwelling.
5. **Prompt Payment and Liens.** Contractor shall promptly pay all subcontractors and materialmen. If any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Contract file a lien against the Dwelling, the Contractor shall promptly discharge such lien pursuant to the Lien Law.
6. **Insurance.** Contractor shall maintain the insurance required by Article 22 of the HRP Construction Contract and shall name the Homeowner and the City of New York, including its officials and employees, additional insureds.
7. **Protection of the Work.** The Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism until Final Acceptance of the Work (or earlier use, occupancy or operation in accordance with the terms of this Contract); and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace or repair such Work, whichever the City shall determine to be preferable. During the performance of the Work, the Contractor shall take all reasonable precautions to protect the persons and property of the Homeowner and Occupants from damage, loss or injury resulting from the Contractor's, and/or its subcontractors' operations under this Contract. The Contractor's obligation to protect shall include the duty to provide, place or replace and adequately maintain at or about the

Dwelling suitable and sufficient protection such as lights, barricades, and enclosures. If Homeowner's or an Occupant's property is damaged through negligence of the Contractor, the Contractor shall promptly repair the damage or reimburse Homeowner for the reasonable cost of repairing the damage caused by the Contractor. The Contractor agrees to keep the premises broom clean and orderly and to remove all debris during the course of the Work.

8. **No Payment from Homeowner.** The Contractor shall not request payment from the Homeowner for any work on a Dwelling for the Term of the HRP Construction Contract.
9. **Utilities.** Contractor is responsible for disconnecting electricity, telephone, cable and gas as required, to complete the Work and reconnecting as appropriate, including any paying any fees for disconnecting and reconnecting the utilities. Contractor shall be responsible for notifying the Homeowner when it will disconnect and reconnect the utilities.

#### **ARTICLE V: CITY'S RIGHTS & DUTIES**

1. **Duty to Homeowner.** The City's rights and duties to the Homeowner are set forth in the Grant Agreement.
2. **Duty to Contractor.** The City's rights and duties to the Contractor are set forth in the HRP Construction Contract.

#### **ARTICLE VI: DEFAULT & TERMINATION**

1. Homeowner will be in default under this Contract upon the occurrence of any of the following events: (i) Homeowner fails to perform the terms of this Contract and such failure continues for five (5) days after delivery of written notice of the failure; (ii) Homeowner and/or the Occupants fail to cooperate with the Contractor's reasonable directions and orders or their actions create a safety risk in the Dwelling; (iii) Homeowner commits a default under any other contract it has entered into with the City relating to Hurricane Sandy relief; (iv) Homeowner has misrepresented Homeowner's eligibility for the HRP and/or this Work; or (v) Homeowner has made any misrepresentations in connection with this Contract. In the event of Homeowner's default of items (i) and (ii), the City and/or Contractor shall have the right, without prejudice to any other right or remedy, to take any, all, or none of the following actions, and in the event of Homeowner's default of items (iii), (iv) and (v), the City shall have the right, without prejudice to any other right or remedy, to take any, all, or none of the following actions:
  - a. Terminate this Contract on written notice to Homeowner.
  - b. Stop Work on the Dwelling or direct the Contractor to stop work on the Dwelling, either temporarily or permanently.
  - c. Issue a Supplemental Job Order to omit a portion of the Work.
  - d. Sue Homeowner for damages, injunctive, or equitable relief.

2. Contractor will be in default under this Contract upon the occurrence of any of the following events: (i) Contractor fails to perform the terms of this Agreement and such failure continues for two (2) days after delivery of written notice of the failure; or (ii) Contractor is declared in default under the provisions of its HRP Construction Contract with the City. In the event of Contractor's default, the City and/or the Homeowner shall have the right, without prejudice to any other right or remedy, to take any, all, or none of the following actions:
  - a. Terminate this Contract on written notice to Contractor.
  - b. Stop Work on the Dwelling or direct the Contractor to stop work on the Dwelling, either temporarily or permanently.
  - c. Sue Contractor for damages, injunctive, or equitable relief.
3. **Termination for Convenience:** Homeowner shall have the right to terminate this Contract for convenience by providing written notice to the Contractor and the City with at least five days notice. If Homeowner terminates this Contract, all or a portion of the funds provided by the City for this Work shall be forfeited and the City and the Contractor shall be under no obligation to complete the Work.

#### **ARTICLE VII: MISCELLANEOUS PROVISIONS**

1. **Choice of Law.** This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Homeowner or Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York and the Laws of the United States, where applicable.
2. **Consent to Jurisdiction and Venue.** The parties agree that any and all claims asserted against any party arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum.
3. **Non-Waiver by the City.** No waiver of any breach or default hereunder shall constitute or be construed as a waiver by the City of any subsequent breach or default or of any breach or default of any other provision.
4. **Severability.** If any provision of this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

We, the undersigned, hereby accept all above terms, conditions and/or provisions.

HOMEOWNER #1 SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

HOMEOWNER #2 SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

CITY: CITY OF NEW YORK, DEPT. OF ENVIRONMENTAL PROTECTION

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: Engineer

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**Attachment #1**  
**Job Order Detailed Scope of Work**

**Attachment #2**  
**List of Personal Items Removed from Dwelling.**