



**NYC Build it Back (“BiB”) Repair Program  
Choose Your Own Contractor (“CYOC”)**

**TERMS**

**ARTICLE 1. PAYMENT**

- A. The City of New York (the “City”) shall pay the Home Improvement Contractor (the “HIC”) the amount set forth in Article V of the contract entered into between the HIC and the owner of the Dwelling where the Work shall occur (the “Homeowner”) pursuant to the BiB Program CYOC Option (the “Home Improvement Contract”) for Work completed satisfactorily and for any additional Work pursuant to a Change Order (also referred to as a “Supplemental Job Order”).
- B. The City shall make progress payments after approval of the Work by the person designated in writing by the Program Director - Housing Rehabilitation to inspect the Dwelling (the “Inspector”) according to the inspection schedule in Article 4. The percentage of payment will be based on the Inspector’s determination of the percentage of the job complete, except that payments prior to the final payment shall not exceed 75% of the Home Improvement Contract value. The City will endeavor to make payments within 10 to 14 days of inspection.
- C. Final Payment.
1. Upon completion of the Work on a Home Improvement Contract, the HIC shall submit the final installed quantities on a form provided by the BIB program. Once the final quantities are submitted, the HIC will request a final inspection to approve Final Payment. After the inspection is completed and a Certificate of Final Acceptance is issued, the HIC shall submit a Final Payment Request to the person designated by the Program Director - Housing Rehabilitation to communicate with the HIC (the “CYOC Liaison”) for the Work completed. The HIC shall include with each Final Payment Request:
    1. An invoice that states the City’s and Homeowner’s costs of the Home Improvement Contract and the address of the Dwelling
    2. Certificate of Final Acceptance signed by the Inspector
    3. Homeowner’s certificate of completion of Work
    4. Copy of all Required Permits and Certificates
    5. Verification of Payment to subcontractors made prior to the Final Payment Request, pursuant to subdivision (J) of this Article.
  2. Upon review and approval of the Final Payment Request, the City shall pay the HIC the approved amount applicable to each Home Improvement Contract less any progress payment(s) previously disbursed to the HIC. The final payment shall

include full payment for the Scope of Work and any approved Change Orders. The City may at times retain out of said payments, all such sum or sums which by the terms hereof or by any law, or of any ordinance of the City passed prior to the date of these Terms, it is or may be, authorized to retain.

- D. The City shall calculate the HIC's compensation for the Work by adding the sum of the Unit Prices as Amended on April 25, 2014 (elements of the Work included in the General Specifications and Unit Price Book) multiplied by the Unit Price adjustment factor of 1.5598; plus the sum of Non-Prepriced Items (elements of Work that are not included in the Unit Price Book) multiplied by the Non-Prepriced adjustment factor of 1.215.
1. In the event Non-Prepriced Items are required for the Work, the HIC will submit cost proposals for approval, with at a minimum, the following information:
    - i. Catalog cuts, specification, technical data, calculations, drawing, or other information as required to evaluate the proposed item;
    - ii. If the HIC will perform the Non-Prepriced work with its own forces, it shall submit 3 independent quotes for all material and equipment to be installed. If the Non-Prepriced work is to be subcontracted, the Contractor must submit 3 independent bids from subcontractors. If 3 quotes or bids cannot be obtained, the HIC will provide the reason in writing for the City's approval. The HIC will not submit a quote or bid from any supplier or subcontractor that the HIC 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 for Non-Prepriced Items shall be according to the following formula and multiplied by the adjustment factor of 1.215:
      - a. Reasonable labor Cost (including built-up labor rates) plus
      - b. Direct material costs (supported by 3 quotes) plus
      - c. Direct equipment costs support by equipment amortization data plus
      - d. If applicable, subcontractor costs (supported by 3 quotes)
  2. The Unit Price adjustment factor will be adjusted by the City, pursuant to Article 75(d) of the NYC Build it Back JOCs Contract, and the adjustment factor will be applied at the issuance of the Scope of Work. The City will not annually adjust the Non-Prepriced adjustment factor.
  3. The City shall reimburse the HIC for building permits or other permit fees at the amount for such fee paid for by the HIC for which a receipt is submitted.
  4. The City has amended the NYC Build it Back JOCs Contract Unit Price list to allow the importation of items from Xactimate and the expedient conversion of Non-Prepriced Items to Unit Price Items, to facilitate the development of the Scope of Work; the HIC is advised to review the Unit Price list regularly for updated items, if any.

- E. Where the HIC fails to perform the Work in a Home Improvement Contract Scope of Work, the City may withhold payment, in addition to any other remedy provided for in these Terms or the Home Improvement Contract.
- F. Unearned payments under these Terms or a Home Improvement Contract 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 HIC will be returned to the City.
- G. No money under these Terms shall be disbursed by the City to the HIC except pursuant to these Terms and unless the HIC is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that Mayor's Housing Recovery Office ("HRO") has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR Part 58. The City shall not be responsible for additional services and/or materials that the HIC provides to the Homeowner that are not included in the approved Scope of Work in the Home Improvement Contract.
- H. The HIC shall pay each Subcontractor or materialman not later than seven (7) calendar days after receipt of payment out of amounts paid to the HIC by the City for Work performed by the Subcontractor or materialman under the Home Improvement Contract. The HIC shall include on each Payment Request 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.
- I. If any persons claiming to have performed any labor or furnished any material toward the performance or completion of the Home Improvement Contract file a lien against the Dwelling, the HIC shall discharge such lien in no more than 15 days, pursuant to the Lien Law.
- J. If any claim shall be made by any person or entity against the City or Homeowner for any of the following:
  - 1. An alleged loss, damage, injury, theft or vandalism, 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
  - 2. An infringement of copyrights, patents or use of patented articles, tools, etc.; or
  - 3. Damage claimed to have been causally or indirectly by the failure of the HIC to perform the Work in strict accordance with the Home Improvement 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 HIC to substitute other

satisfactory security in lieu of the monies so withheld. If an action on such claim is timely commenced and the liability of the City, the Homeowner, and/or the HIC shall have been admitted by the HIC to be valid, the Comptroller shall pay such judgment or admitted claim out of the monies retained by the Comptroller and return the balance, if any, without interest, to the HIC.

- K. The acceptance by the HIC, or by anyone claiming through it, of the final payment for the Home Improvement 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 all claims of and liability to the HIC for anything done or furnished by the HIC relating to or arising out of the Home Improvement 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 these Terms or by law, and excepting any claims or any pending dispute resolution procedures and a verified statement of all alleged claims against the City and any pending dispute resolution procedures in accordance with the Home Improvement Contract. The HIC 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 City from the final requisition or by the Comptroller from a final payment, shall not be effective to reserve such claims, anything stated to the HIC orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.

## **ARTICLE 2. TERM & WORK**

- A. These Terms shall apply to all Work on a Home Improvement Contract.
- B. No Home Improvement Contract shall have a Term that exceeds 90 calendar days except upon written permission by the City.
- C. The commencement date in the Home Improvement Contract shall be no more than 90 calendar days after the Joint Scope Meeting. The HIC shall submit the executed Home Improvement Contract to the City no later than three calendar days after execution.
- D. The HIC agrees to perform Work set forth in the Home Improvement Contract Scope of Work by the City. The term "Work" means all services required to complete a Home Improvement Contract, including without limitation, labor, material, superintendence, administration, equipment, and incidentals, and obtaining all permits, certifications, and licenses as may be required to complete the work during the term and the maintenance period set forth in the Home Improvement Contract. In addition, Work may include raising/elevating Dwellings if the HIC stated that it could provide such services on its BiB Program application. The HIC may not refuse to perform any Work required by the City in the Scope of Work.
- E. The HIC shall attend a Joint Scope Meeting with the Homeowner and a private architect or engineer or other design services consultant so designated in writing by the Program

Director - Housing Rehabilitation (the “Engineer”) at a date and time to be set by the HRO. At the Joint Scope Meeting, the Scope of Work shall be established by the City; the Engineer shall photograph items requiring Work; Contract Drawings shall be reviewed; and safety issues will be discussed. At the Joint Scope Meeting or at a later date to be determined at the Joint Scope Meeting, the HIC shall meet with the Homeowner so that the Homeowner may select Homeowner Custom Options (the materials and appliances that the Homeowner has the authority to select pursuant to the Technical Specifications); and the Home Improvement Contract shall be executed.

- F. If the HIC fails to attend a scheduled Joint Scope Meeting or arrives more than 30 minutes after the scheduled time, the Program Director – Housing Rehabilitation, may terminate these Terms.
- G. The HIC shall be responsible for managing, supervising, and directing its employees and subcontractors. The HIC shall designate a superintendent responsible for each Home Improvement Contract and for communicating with the CYOC Liaison and the Homeowner. The name of the superintendent and the contact information shall be provided in Article X of the Home Improvement Contract.
- H. The HIC shall electronically file, to the extent possible, all applications and plans that require approval by the City Department of Buildings (“DOB”) via the NYC Development Hub. Information and Instructions about the NYC Development Hub are available on-line at: [http://www.nyc.gov/html/dob/html/development/the\\_hub\\_main.shtml](http://www.nyc.gov/html/dob/html/development/the_hub_main.shtml).) The DOB will endeavor to expedite the review of applications and plans relating to Dwellings that are enrolled in the BiB Program.
- I. The City encourages the HIC to understand the local community and use local resources where appropriate.
- J. The HIC shall comply with all laws applicable to the Terms including, but not limited to:
  - 1. The construction standards concerning energy efficiency set forth in section VI(A)(1)(a)(5)(c) of HUD Docket No. FR-5696-N-01.
  - 2. Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poison Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Act of 1992 (42 U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts for work in connection with a Home Improvement Contract.
  - 3. Consistent with 24 CFR § 570.614, the HIC warrants that all services, programs, and/or construction (including design and alteration) under a Home Improvement Contract 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).

4. The 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).
5. 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) if the value of the Work awarded to the HIC or a subcontractor under all of its Home Improvement Contracts exceeds \$100,000.

### **ARTICLE 3. INDEMNIFICATION; NOTICE OF LOSS**

- B. The HIC shall defend, indemnify, and hold harmless the City and the Homeowner pursuant to Article XIV(4) of the Home Improvement Contract.
- C. In the event of any loss, damage or injury to Work, persons or property, or any accidents arising out of the operations of the HIC and/or its Subcontractors under this Contract, the HIC shall make a full and complete report in writing to the CYOC Liaison within three (3) calendar days after the occurrence. The HIC shall notify in writing the appropriate insurance carrier(s) of any such loss, damage, injury, or accident, and any claim or suit arising therefrom, immediately, but not later than 20 calendar days after such event. The HIC's notice to the insurance carrier(s) 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 HIC] as Named Insured."
  1. At the time notice is provided to the insurance carrier(s), the HIC shall provide copies of such notice to (1) Insurance Unit, NYC Comptroller's Office, 1 Centre Street - Room 1222, New York, NY, 10007 and (2) Program Director - Housing Rehabilitation, 250 Broadway, 24<sup>th</sup> Floor, New York, NY 10007.
  2. If the HIC fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the HIC shall indemnify the City and the Homeowner 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.

### **ARTICLE 4. INSPECTIONS & AUDITS**

- A. During the progress of the Work and up to the date of Final Acceptance, as well as during the performance of Work during the Maintenance Period set forth in the Home

Improvement Contract, the HIC shall at all times afford the representatives of the City and the federal government every reasonable opportunity for inspecting all Work done or being done at the Dwelling.

- B. Each Dwelling shall be subject to a minimum of two inspections conducted by the BiB Program Inspectors: an In-Progress Inspection and a 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).
1. In-Progress Inspection. The HIC shall request an In-Progress Inspection when all Work that will be subject to closure (e.g., Work behind drywall or kitchen cabinetry) is complete and visible. No Work shall be enclosed and made non-visible prior to passing the In-Progress Inspection.
  2. Inspections for Elevated Dwellings:
    - a. Pre-Lift Inspection. At least three days prior to the date that a Dwelling is scheduled to be raised, the HIC shall notify the CYOC Liaison of the date and time the Dwelling is to be raised. The Inspector shall conduct a pre-lift inspection. The HIC shall not raise the Dwelling unless and until it has obtained approval from the Inspector after the pre-lift inspection. The HIC shall raise the Dwelling only if the Inspector is on site during the raising.
    - b. Foundation Completion Inspection. The HIC shall notify the CYOC Liaison on the date that the foundation is complete. The Inspector will inspect the structural work for conformance with the Home Improvement Contract and the home interior for damage caused during the raising. The HIC shall not commence Work on the rehabilitation of the interior of the Dwelling until the Inspector approves the raising Work and authorizes commencement of the Work on the interior.
  3. Final Inspection. Upon completion of the Work, and after an inspection by the Department of Buildings, if required by Law, the HIC shall submit a request for Final Inspection to the CYOC Liaison along with a submission of the final quantities installed in the home. The CYOC Liaison shall schedule a Final Inspection within three calendar days after receipt of the HIC's written request.
    - a. Final Acceptance. The 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 in the Scope of Work are complete and that no further Work is required pursuant to the Home Improvement Contract.
    - b. If a re-inspection is necessary for the Final Inspection and the Inspector determines upon re-inspection that the Work is satisfactorily completed,

the date of such re-inspection shall be the date of Final Acceptance. The Inspector shall make a re-inspection within three calendar days after receipt of the HIC's request.

- C. Request for Re-inspection. If the Inspector determines that the HIC failed an Inspection, the HIC shall promptly correct the problems to be identified by the Inspector and then request a re-inspection. The amount listed on the Unit Price List for re-inspection shall be deducted from the total price of the Work in the Home Improvement Contract.
- D. The City Department of Investigation's Integrity Monitor will monitor work performed in the BiB Program, including the Work of the HIC, and the HIC's chief executive personnel, employees, Subcontractors, suppliers, vendors, and affiliated businesses and monitor and investigate allegations of fraud by the HIC and other parties. HIC shall fully cooperate with the Integrity Monitor. HIC shall post at the Dwelling, a poster provided by the City, informing workers how to report fraud to the City. Based on the Integrity Monitor's reports, the City may take remedial action or terminate the HIC's Home Improvement Contract(s).

#### **ARTICLE 5. BONDS AND INSURANCE**

- A. **Bonds.** The HIC shall obtain performance and payment bonds in the amount of its Work for all BIB Program Home Improvement Contracts. The bonds must be prepared on the form of bonds authorized by the City and attached hereto or on forms approved by the City. 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. 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. The cost of the bond is included in the unit prices; the HIC shall not charge the Homeowner for bonds.
- B. **Insurance.**
  - 1. **Types of Insurance:** The HIC shall procure and maintain the following types of insurance with the minimum limits and special conditions specified below. Such insurance shall be maintained from the date the HIC commences Work through the date of completion of all required Work. All insurance shall meet the requirements set forth in this Article. 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 HIC can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.
    - a. **Commercial General Liability Insurance:** If the HIC performs Work on one (1) or two (2) homes in the Build it Back Program, the HIC shall maintain Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under the Home Improvement Contract(s)

entered into under the NYC Build it Back Program in the amount of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. If the HIC performs Work on more than two (2) homes in the Build it Back Program, the HIC shall maintain Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under the Home Improvement Contract(s) entered into under the NYC Build it Back Program in the amount of at least one million dollars (\$1,000,000) per occurrence and four million dollars (\$4,000,000) aggregate. Coverage shall be 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.

- i. Such Commercial General Liability Insurance shall name the City (including its officials and employees) and the Homeowner as Additional Insureds with coverage at least as broad as the latest edition of ISO Forms CG 20 26 and CG 20 37 (covering all locations at which the Work is performed).
- b. **Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance:** The HIC 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. In addition to the proof of insurance that must be submitted to the City pursuant to Article 5(B)(3), below, the HIC shall furnish the Homeowner with a certificate of Workers’ Compensation Insurance prior to the commencement of Work on either a New York State Workers’ Compensation Board Form No. C-105.2 or State Insurance Fund Form No. U-26.3. If the HIC obtained an exemption from the requirement for Workers’ Compensation Insurance from the Department of Consumer Affairs when applying for the Home Improvement Contractor License and the HIC is not required by law to maintain Workers’ Compensation insurance, the HIC must provide proof on a Request for WC/DB Exemption Form No. CE-200. An ACORD form as not acceptable proof of Workers’ Compensation Insurance.
- c. **Automobile Liability Insurance:** The HIC shall provide Automobile Liability Insurance for liability arising out of ownership, maintenance or use of any vehicles to be used in connection with the Home Improvement

Contract(s) in the amount of at least five hundred thousand (\$500,000) each accident, combined single limit.

- d. **Contractors Pollution Liability Insurance:** If the Home Improvement Contract requires asbestos, lead, or mold remediation, the HIC shall provide Contractors Pollution Liability Insurance covering bodily injury and property damage or shall cause its Subcontractor(s) engaged in asbestos, lead, or mold remediation to provide such insurance. Coverage shall include without limitation, (a) loss of use of damaged property or property that has not been physically injured, (b) transportation, and (c) non-owned disposal sites. Such insurance shall provide coverage for actual or 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 these Terms. Such insurance shall be in the amount of at least one million dollars (\$1,000,000) per occurrence and shall name the City (including its officials and employees) and the Homeowner as Additional Insureds.

2. **General Requirements for Insurance Coverage and Policies.**

- a. All required insurance policies shall be procured from companies that are licensed to do business in the State of New York.
- b. The HIC 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. The HIC shall not charge the Homeowner for the cost of insurance.
- c. Policies of insurance provided under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

3. **Proof of Insurance.**

- a. For the types of insurance listed in this paragraph (3), the HIC shall submit the following proof of insurance to the City when it submits the executed Home Improvement Contract.
- b. For Workers' Compensation Insurance provided pursuant to this Article, the HIC 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 this Article, the HIC 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 Program Director - Housing Rehabilitation. ACORD forms are not acceptable.

- c. For Commercial General Insurance policies, the HIC shall submit one or more Certificates of Insurance on forms acceptable to the City. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) that the City and the Homeowner are Additional Insureds with coverage at least as broad as the most recent edition of ISO Forms CG 20 26 and CG 20 37; and (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number). All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form provided by the City or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier.
- d. Documentation confirming renewals of insurance shall be submitted to the Program Director - Housing Rehabilitation prior to the expiration date of coverage of policies required under these Terms.
- e. The HIC shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Article upon the demand for such policy by the Commissioner or the City Corporation Counsel.

#### **4. Operations of the HIC.**

- a. The HIC shall not commence Work under a Home Improvement Contract unless and until all required certificates have been submitted to and accepted by the Program Director - Housing Rehabilitation. Acceptance by the Program Director - Housing Rehabilitation of a certificate does not excuse the HIC from securing insurance consistent with all provisions of this Article or of any liability arising from its failure to do so.
- b. The HIC shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Article and is authorized to perform Work only during the effective period of all required coverage.
- c. In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the HIC shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Program Director - Housing

Rehabilitation. Upon quitting the Dwelling, except as otherwise directed by the Program Director - Housing Rehabilitation, the HIC shall leave all materials, equipment, tools, and supplies on the Dwelling. Time shall continue to run during such periods and no extensions of time to the Home Improvement Contract will be granted. The Program Director - Housing Rehabilitation may also declare the HIC in default for failure to maintain required insurance.

- d. In the event the HIC receives notice, from an insurance company or other person, that any insurance policy required under this Article shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the HIC shall immediately forward a copy of such notice to both the Program Director - Housing Rehabilitation 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 HIC shall ensure that there is no interruption in any of the insurance coverage required under this Article.
  - e. 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 (whether on behalf of the HIC as Named Insured or the City or the Homeowner as Additional Insured), the HIC shall provide timely notice thereof.
4. **Professional insurance for Subcontractor providing architectural or engineering services.** If the HIC engages a subcontractor to provide architectural or engineering services for a Home Improvement Contract, the HIC shall submit evidence of Professional Liability Insurance in the amount of at least One Million Dollars (\$1,000,000) per claim. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years.
  5. Apart from the requirement in paragraph (5) directly above, these Terms do not obligate the HIC to ensure that any Subcontractors maintain any insurance not required by Law. Nevertheless, in the event the HIC requires any Subcontractor to procure insurance with regard to any operations under a Home Improvement Contract and requires such Subcontractor to name the HIC as an Additional Insured thereunder, the HIC 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.
  6. **Mailing Address.** Wherever reference is made in this Article to documents to be sent to the Program Director - Housing Rehabilitation (e.g., notices, filings, or submissions), such documents shall be sent to NYC Build It Back: CYOC, Church Street Station, P.O. Box 7140, New York, NY 10008.

7. **Materiality/Non-Waiver.** The HIC's failure to secure policies in complete conformity with this Article, or to give an insurance company timely notice of any sort required in these Terms or the Home Improvement Contract or to do anything else required by this Article constitutes a material breach of these Terms. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
8. **Other Remedies.** Insurance coverage provided pursuant to this Article or otherwise shall not relieve the HIC of any liability under these Terms or the Home Improvement Contract, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of these Terms, the Home Improvement Contract, or law.

## **ARTICLE 6. CHANGES**

Changes may be made to these Terms only as authorized by the Program Director - Housing Rehabilitation. Changes may be made to a Home Improvement Contract pursuant to Article VI of the Home Improvement Contract.

## **ARTICLE 7. NO ESTOPPEL**

- A. Neither the City nor any agency, officer, agent, or employee thereof, shall be bound or estopped by any determination, decision, approval, order, letter, payment or certificate given under or in connection with these Terms or the Home Improvement Contract by the City the Program Director - Housing Rehabilitation, the CYOC Liaison, the Engineer, the Inspector or any other officer, agent or employee of the City, either before or after the Final Acceptance of the Work and payment therefor:
  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 certification 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 the Home Improvement Contract; and
  2. From demanding and recovering from the HIC any overpayment made to it, or such damages as the City may sustain by reason of the HIC's failure to perform each and every part of the Home Improvement Contract.

## **ARTICLE 8. EMPLOYEES AND LABOR**

- A. **Competent Employees.** The HIC and its Subcontractors shall not employ on the Work anyone who is not competent, faithful, and skilled in the Work for which he/she shall be employed; and whenever the Program Director - Housing Rehabilitation shall inform the HIC, in writing, that any employee is, in his/her opinion, incompetent, unfaithful or

disobedient, that employee shall be discharged from all Work on any Home Improvement Contract forthwith and shall not again be employed upon it.

- B. **Interference with Work.** Any labor, materials or means whose employment, or utilization during the term of the Home Improvement 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 HIC or its Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed pursuant to a Home Improvement Contract, or by 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 HIC of this requirement may, upon certification of the Program Director - Housing Rehabilitation, be considered as proper and sufficient cause for declaring the HIC to be in default, and for the City to take action against it pursuant to these Terms or the Home improvement Contract.
- C. **Discrimination.** The HIC shall not engage in any discriminatory practices (including actual or perceived race, creed, color, sex, national origin, age, sexual orientation or affectational preference, gender, disability, marital status, partnership status, alienage or citizen status, military status, status of an individual as a victim of domestic violence) as prohibited by law. Specifically, these Terms are subject to:
1. Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620).
  2. Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107.
  3. 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.
  4. 24 CFR Part 6, 8, and 146.

The provisions of this section shall be incorporated in and made a part of all subcontracts executed in connection with this agreement.

- D. **Wages.**
1. All persons employed by the HIC 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 a Home Improvement 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 HIC shall maintain employment and payroll records that comply with the requirements of the Fair Labor Standards Act.
  2. The HIC shall comply with 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. This provision shall be included in all subcontracts.

3. **Working Conditions.** No part of the Work, labor or services shall be performed or rendered by the HIC in any plants, factories, buildings or surroundings or under working conditions that are unsanitary or hazardous or dangerous to the health and safety of employees working on the Home Improvement Contract. Compliance with the safety, sanitary and factory inspection laws of the state where the Work is performed shall be prima facie evidence of compliance.
4. **Laminated Identification Tags.** The HIC 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 HIC shall require as a condition of employment on the Dwelling 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 9. RECORDS AND AUDIT**

- A. Records shall be maintained in accordance with requirements prescribed by HUD and the City with respect to all matters covered by these Terms and retained for at least three years after the City makes final payments and all other pending matters concerning these Terms and the Home Improvement Contract are closed.
- B. 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 these Terms or a Home Improvement Contract, shall be clearly identified and readily accessible.
- C. 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 concerning matters covered by these Terms and the Home Improvement Contract. The HIC may be required to submit a report to the City on a quarterly basis, pursuant to Section VI(A)(2)(e) of HUD Docket No. FR-56960-N-01.
- D. 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 HRO and by the City Comptroller pursuant to the powers and responsibilities as conferred upon said Comptroller by the City Charter and Administrative Code, as well as all orders and regulations promulgated pursuant thereto. The HIC is advised that all Change Orders (including negotiated ones) are also subject to audit.
- E. The HIC shall submit any and all documentation and justification in support of expenditures or fees under these Terms as may be required by the HRO and the

Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the HRO and the Comptroller as they consider necessary.

- F. 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.
- G. The HIC shall not be entitled to payment for Work on a Home Improvement Contract until all requirements have been satisfactorily met.
- H. 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 U.S. Comptroller General may deem necessary, the HIC 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 these Terms and/or a Home Improvement Contract.

**ARTICLE 10. PROGRAM DIRECTOR - HOUSING REHABILITATION'S RIGHT TO DECLARE HIC IN DEFAULT**

- A. In addition to those instances specifically referred to in other articles, the Program Director - Housing Rehabilitation shall have the right to declare the HIC in default if:
  - 1. The HIC fails to perform the Terms or the City determines that the HIC violated the terms of the Home Improvement Contract; or if
  - 2. The HIC fails to commence or proceed with Work when and as directed to do so by the Program Director - Housing Rehabilitation or the CYOC Liaison or the HIC has abandoned the Work; or if
  - 3. The HIC fails to execute a Home Improvement Contract after a Joint Scoping Meeting; or if
  - 4. The HIC sells or assigns a majority interest in the HIC; or if
  - 5. The HIC fails to secure and maintain all required insurance; or if
  - 6. A receiver(s) is appointed to take charge of the HIC's property or affairs; or if

7. The Program Director - Housing Rehabilitation is of the opinion that the HIC 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 is or has been willfully or in bad faith violating any of the provisions of these Terms or the Home Improvement Contract; or if
8. Any statement or representation of the HIC in the registration application, the Home Improvement Contract or in any document submitted by the HIC to the City or the Homeowner with respect to a Home Improvement Contract, the Work, or these Terms (for purposes of securing a Home Improvement Contract) was untrue or incorrect when made; or if
9. The HIC's Home Improvement Contractor license is revoked or suspended; or if
10. The HIC 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 New York City Procurement Policy Board Rules.
11. Before the Program Director - Housing Rehabilitation may exercise the right to declare the HIC in default, the Program Director - Housing Rehabilitation shall give the HIC an opportunity to be heard upon not less than two calendar days notice.

#### **ARTICLE 11. EXERCISE OF THE RIGHT TO DECLARE DEFAULT**

- A. The right to declare in default for any of the grounds specified or referred to in Article 10 shall be exercised by sending the HIC a notice, signed by the Program Director - Housing Rehabilitation, setting forth the ground or grounds upon which such default is declared and the conditions for quitting the Dwelling that the HIC shall follow (hereinafter referred to as a "Notice of Default").
- B. The Program Director - Housing Rehabilitation's determination that the HIC is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the HIC from commencing a plenary action for any damages relating to the Terms or a Home Improvement Contract. If the HIC protests the determination of the Program Director - Housing Rehabilitation, the HIC may commence a lawsuit under Article 78 of the New York Civil Practice Law and Rules.

#### **ARTICLE 12. COMPLETION OF THE WORK**

- A. The Program Director - Housing Rehabilitation, after declaring the HIC in default, may then have the Work completed by such means and in such manner, by a contractor engaged by the City's Build it Back JOCs program, utilizing the HIC's materials, equipment, tools and supplies remaining on the Dwelling, and also any Subcontractors.

- B. After such completion, the Program Director - Housing Rehabilitation shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting. Such certificate shall be binding and conclusive upon the HIC, its Sureties, and any person claiming under the HIC, as to the amount thereof.
- C. The expense of such completion, including any and all related and incidental costs, as so certified by the Program Director - Housing Rehabilitation shall be charged against and deducted out of monies which are earned by the HIC prior to the date of default. Should the expense of such completion, as certified by the Program Director - Housing Rehabilitation, exceed the total sum which would have been payable by the City under the Home Improvement Contract if it had been completed by the HIC, any excess shall be paid by the HIC.

### **ARTICLE 13. PARTIAL DEFAULT**

- A. In case the Program Director - Housing Rehabilitation shall declare the HIC in default as to a part of the Work only, the HIC shall discontinue such part, shall continue performing the remainder of the Work in strict conformity with these Terms and the Home Improvement Contract, and shall in no way hinder or interfere with any other contractor(s) or persons whom the Program Director - Housing Rehabilitation may engage to complete the Work as to which the HIC was declared in default.
- B. The provisions of these Terms relating to declaring the HIC in default as to the entire Work shall be equally applicable to a declaration of partial default, for a Home Improvement Contract or any portion thereof, except that the Program Director - Housing Rehabilitation shall be entitled to utilize for completion of the part of the Work as to which the HIC was declared in default only such materials, equipment, tools and supplies as had been previously used by the HIC on such part.

### **ARTICLE 14. CONFIDENTIALITY**

- A. The HIC agrees to hold confidential, both during and after the completion or termination of a Home Improvement Contract, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the HIC under the Home Improvement Contract. The HIC agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Program Director - Housing Rehabilitation. The HIC 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 HIC 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 14(B), the HIC 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 HIC 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 HIC, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

- B. The HIC shall provide notice to the Program Director - Housing Rehabilitation within three calendar days of the discovery by the HIC of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the HIC 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 HIC or its employees, Subcontractors, or agents. Upon the discovery of such security breach, the HIC shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Program Director - Housing Rehabilitation 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 the Home Improvement 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 Housing Recovery Office shall provide the HIC 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 a Home Improvement Contract are insufficient to cover the costs detailed above, the HIC shall pay directly for the costs, detailed above, if any.
- C. The HIC shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The HIC 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.
- D. The HIC, and its officers, employees, and agents shall notify the Housing Recovery Office, at any time either during or after completion or termination of a Home Improvement 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 the Home Improvement Contract at least twenty-four hours prior to any statement to the press or at least five calendar days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The HIC may not issue any statement or submit any material for publication that includes confidential information.
- E. At the end of six years from the date of final payment or the date of earlier termination, HIC shall return to the City any and all confidential information in the possession of the

HIC or its Subcontractors. If the HIC or its Subcontractors are legally required to retain any confidential information, the HIC shall notify the City 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 HIC shall confer with the City, in good faith, regarding any issues that arise from the HIC retaining such confidential information.

- F. A breach of this Article shall constitute a material breach of these Terms for which the Housing Recovery Office may terminate these Terms and a Home Improvement Contract(s). The Housing Recovery Office reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **ARTICLE 15. CLAIMS AND ACTIONS THEREON**

No lawsuit shall be instituted unless commenced within one year from the date of Final Acceptance of the Work on the Home Improvement Contract.

## **ARTICLE 16. INVESTIGATION(S) CLAUSE**

- A. The parties to these Terms 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.
- B. 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;
- C. 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;

- D. 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;
- E. 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.
- F. 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 subdivision H of this Article without the City incurring any penalty or damages for delay or otherwise.
- G. The penalties which may attach after a final determination by the Commissioner may include but shall not exceed:
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 fro-m the City; and/or
  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 these Terms, 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.
- H. The Commissioner shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in Articles 16(H)(1) and 16(H)(2). The Commissioner may also consider, if relevant and appropriate, the criteria established in Articles 16(H)(3) and 16(H)(4), in addition to any other information which may be relevant and appropriate:
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.

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.
3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
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 XXIV(G), 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 XXIV(E), 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.

I. Definitions:

1. The term "Commissioner" as used herein shall include the Program Director – Housing Rehabilitation.
2. 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.
3. 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.
4. 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.
5. 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.

J. In addition to and notwithstanding any other provision of these Terms and the Home Improvement Contract, the Commissioner may in his/her sole discretion terminate these Terms and/or the Home Improvement Contract upon not less than three (3) Days written notice in the event the HIC 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 registration by the HIC, or affecting the performance of these Terms or the Home Improvement Contract.

#### **ARTICLE 17. TERMINATION BY THE CITY**

- A. In addition to termination pursuant to any other article of these Terms, the Program Director - Housing Rehabilitation may, at any time, terminate the HIC's registration, a Home Improvement Contract, or a portion of a Home Improvement Contract, by written notice. In the event of such termination, the HIC shall, upon receipt of such notice, unless otherwise directed by the City:
1. Stop Work on the date specified in the notice;
  2. Take such action as may be necessary for the protection and preservation of the City's and Homeowner's materials and property;
  3. Cancel all cancelable orders for material and equipment;
  4. Assign to the City and deliver to the Dwelling or another location designated by the Program Director - Housing Rehabilitation, any non-cancelable orders for material and equipment that is not capable of use except in the performance of the Home Improvement Contract and has been specifically fabricated for the sole purpose of the Home Improvement Contract and not incorporated in the Work;
  5. Take no action which will increase the amounts payable by the City or the Homeowner under the Home Improvement Contract.
- B. In the event of termination by the City pursuant to this article, payment to the HIC for Work shall be in accordance with Articles 17(B)(1) or (2):
1. Unit Price Items: On all Unit Price items the City will pay the HIC the sum of Articles 17(B)(1)(a) and 17(B)(1)(b), less all payments previously made pursuant to these Terms and the Home Improvement Contract:
    - a. For all satisfactorily completed units, the unit prices in the Home Improvement Contract, or
    - b. For units that have been ordered but are only partially completed, the HIC will be paid:
      - i. A pro rata portion of the prices in the Home Improvement Contract based upon the percent completion of the unit and

- ii. For non-cancelable material and equipment, less salvage value, that is not capable of use except in the performance of the Home Improvement Contract and has been specifically fabricated for the sole purpose of the Home Improvement Contract, but not yet incorporated in the Work, the HIC shall be paid the lesser of:
  - a. The direct cost or
  - b. The fair and reasonable value, whichever is less, of such material and equipment, plus necessary and reasonable delivery costs.
  - c. In addition, the HIC shall be paid five (5%) percent of Article 17(B)(1)(b)(ii)(a) or Article 17(B)(1)(b)(ii)(b), whichever applies.

The City shall not pay for restocking fees.

- 2. Non Pre-priced Items: On all Non-Pre-priced items the City will pay the HIC the sum of Articles 17(B)(2)(a) and 17(B)(2)(b), less all payments previously made pursuant to these Terms and the Home Improvement Contract:
  - a. For all satisfactorily completed units, the price for the Non-Pre-priced items in the Home Improvement Contract, and
  - b. For units that have been ordered but are only partially completed, the HIC will be paid:
    - (i) For non-cancelable material and equipment, less salvage value, that is not capable of use except in the performance of the Home Improvement Contract and has been specifically fabricated for the sole purpose of the Home Improvement Contract, but not yet incorporated in the Work, the HIC shall be paid the lesser of:
      - a. The direct cost or
      - b. The fair and reasonable value, whichever is less, of such material and equipment, plus necessary and reasonable delivery costs.
      - c. In addition, the HIC shall be paid five (5%) percent of Article 17(B)(2)(b)(i)(a) or Article 17(B)(2)(b)(i)(b), whichever applies.

- 3. “Direct Costs” as used in this Article 17(B) shall mean:

1. The actual purchase price of material and equipment, plus necessary and reasonable delivery costs,
2. The actual cost of labor involved in construction and installation at the Dwelling, and
3. The actual cost of necessary bonds and insurance purchased pursuant to requirements of these Terms and the Home Improvement Contract less any amounts that have been or should be refunded by the HIC's sureties or insurance carriers.

Direct Costs shall not include overhead.

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

#### **ARTICLE 18. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

- A. These Terms and the Home Improvement Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the HIC, 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.
- B. The HIC agrees that any and all claims asserted by or against the City or Homeowner arising under or relating to these Terms or the Home Improvement Contract shall be solely 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.

#### **ARTICLE 19. 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.

## **ARTICLE 20. CONFLICTS OF INTEREST**

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 these Terms in relation to Conflicts of Interest and shall be extended to Subcontractors authorized to perform Work, labor and services pursuant to any Home Improvement Contract and further, it shall be the duty and responsibility of the HIC 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.

## **ARTICLE 21. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS**

- A. The HIC 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:
1. Placing qualified small minority businesses and women's business enterprises on solicitation lists;
  2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  3. 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;
  4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
  5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

## **ARTICLE 22. DEBARMENT CERTIFICATION**

The HIC 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 HIC 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 these Terms or a Home Improvement Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the HIC.

## **ARTICLE 23. SUSPENSION OF HUD FUNDING**

These Terms may be suspended and/or terminated without liability to the City if the HUD grant to the City pursuant to Title 1 of the Housing and Community Development Act of 1974 (P.L.

93-383) is suspended or terminated, and unless and until the City receives Community Development funds in an amount that is deemed sufficient to enable it to fund the HIC's Home Improvement Contract(s), the City is under no obligation to make any payments to the HIC.