CONTRACT
NYC Rapid Repairs Program
Contract # SA-5E

THIS CONTRACT, made and entered into ~~December~~ January 7, 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, NY 11373 and Conti of New York LLC, located at 2045 Lincoln Highway, Edison , New Jersey 08817.

WITNESSETH:

WHEREAS, Hurricane Sandy caused unprecedented damage throughout the City and caused thousands of homes to lose heat, electricity, and water service, resulting in a threat to the health and welfare of tens of thousands of residents; and

WHEREAS, on October 30, 2012, President Obama declared that a major disaster exists in the State of New York as a result of Hurricane Sandy and authorized the Federal Emergency Management Agency ("FEMA") to provide emergency assistance to the City; and

WHEREAS, in order to help residents return to their homes, the City established the Rapid Repairs Program (the "RRP") to make temporary repairs to single-family and multi-unit dwellings eligible for participation in the RRP; and

WHEREAS, on November 17, 2012, the Commissioner of the Department of Housing Preservation and Development ("HPD"), issued an emergency declaration in order to proceed with emergency procurements for the temporary restoration of heat, power and hot water, as well as ancillary repairs necessary to provide heat power, and hot water to residences damaged by Hurricane Sandy, protect them from further damage, and allow residents to return to or remain in such residences; and

WHEREAS, pursuant to HPD's Emergency Declaration, Charter sections 315 and 1112, and Procurement Policy Board Rule 3-06, the City, acting by and through DEP, entered into agreements on November 20, 2012, with six contractors, including Contractor, to make such temporary repairs (the "Term Sheets"); and

WHEREAS, it is the intention of the parties to the Term Sheets to replace the Term Sheets with a requirements contract that includes additional terms and governs the provision of all of the work;

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

(A) This Contract shall supersede the Term Sheet entered into by the parties on November 20, 2012.

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

(1) This Document;

(2) The Procurement Policy Board Rules (the "PPB Rules");

(3) All provisions required by Law to be inserted in this Contract, including 44 C.F.R. section 13.36(i), whether actually inserted or not;

(4) Insurance Documents;

(5) Payment and Performance Bonds;

(6) The NYC RRP Scope Description and NYC RRP Guidance Documents, as they may be revised from time to time during the Term and posted on a Web site by the City;

(7) The FEMA Recovery Program Guidance Document entitled "Sheltering and Temporary Essential Power (STEP) Pilot Program" and the FEMA Disaster Assistance Policy Document entitled "Debris Removal from Private Property" (collectively referred to as the "FEMA Guidelines"), as they may be revised from time to time during the Term and posted on a Web site by the City;

(8) All Appendices, including

(a) Appendix A: Environmental Health & Safety Requirements;

(b) Appendix B: The NYC Rapid Repairs Legal Right of Entry Form, the Right-of-Entry Permit, the Right-of-Entry Permit Request for Cancellation, and Statement of Limitations, as they may be revised from time to time during the Term;

(c) Appendix C: The NYC RRP Work Order Form, as it may be revised from time to time during the Term;

(d) Appendix D: The Broker's Certification;

(e) Appendix E: Prevailing Wage Schedules;

(f) Appendix F: Local Law No. 30-12 Notice (elsewhere referred to as the Whistleblower Protection Expansion Act Notice); and

(g) Appendix G: Iran Divestment Act Notice and Compliance Rider.

(C) This Contract shall serve as a master agreement that governs Work performed pursuant to Work Orders for individual Properties.

ARTICLE 2 DEFINITIONS

(A) 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:

(1) "Agency" means 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) "Agency Chief Contracting Officer" or "ACCO" means the person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate agency staff in conjunction with the CCPO.

(3) "City Chief Procurement Officer" or "CCPO" means 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 supplies and services.

(4) "Commissioner" means the head of the Department of Environmental Protection of the City of New York, or his/her duly authorized representative.

(5) "Comptroller" means the Comptroller of the City of New York.

(6) "Contract" or "Contract Documents" means each of the various parts of the Contract referred to in Article 1 hereof, both as a whole and severally.

(7) "Contract Work" means everything required to be furnished and done by Contractor by any one or more of the parts of the Contract referred to in Article 1, except Extra Work as hereinafter defined.

(8) "Contractor" means the entity signing this Contract, whether a corporation, firm, partnership, joint venture, individual, or any combination thereof, and its, 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 Contractor under this Contract.

(9) "Customer Management Consultant" means the firm designated by the City to interface with the public concerning the eligibility of Properties in the RRP and to schedule appointments for assessments of Properties.

(10) "Days" means calendar days, except where otherwise specified.

(11) "Date of Execution of this Contract" means the date in the first unnumbered paragraph on page one of this Contract.

(12) "Department" or "DEP" means the Department of Environmental Protection of the City of New York, acting by or through the Commissioner thereof, or his/her duly authorized representative.

(13) "Extra Work" means Work other than that required by the Contract at the time of award which is authorized by the Commissioner pursuant to the Extra Work provision of this Contract.

(14) "Integrity Monitor" means the person or firm hired by the New York City Department of Investigation to conduct audits and investigations.

(15) "Law" or "Laws" means the Constitutions of the United States and the State of New York, the New York City Charter ("Charter"), the New York City Administrative Code ("Admin Code"), a statute of the United States or of the State of New York, a local rule of the City of New York, and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

(16) "Other Contractor(s)" means any contractor (other than the entity which executed this Contract or its Subcontractors) who has a contract

for work under the RRP, not including the Project Manager or Customer Management Consultant.

(17) "Payroll Taxes" shall mean State Unemployment Insurance ("SUI"), Federal Unemployment Insurance ("FUI"), and payments pursuant to the Federal Insurance Contributions Act ("FICA").

(18) "Procurement Policy Board" or "PPB" means the Agency of the City of New York whose function it is to establish comprehensive and consistent procurement policies and rules which shall have broad application throughout the City.

(19) "Project Manager" means Shaw Environmental & Infrastructure, Inc., a Louisiana Corporation and its subcontractors and subconsultants, or any successor designated by the Commissioner.

(20) "Program Management Team" means the City employees designated by the Commissioner and the Project Manager, collectively.

(21) "Property" means a single-family or multi-dwelling-unit building that was adversely affected by Hurricane Sandy that is designated by the City for participation in the RRP. As appropriate according to the context, "Properties" refers to more than one Property assigned to Contractor or all single-family and multi-dwelling-unit buildings in the RRP.

(22) "Property Owner" means the owner of title of a Property or his/her/its authorized representative.

(23) "Required Quantity" means the actual quantity of any item of work or materials which is required to be performed or furnished in order to comply with the Contract.

(24) "Subcontractor" means any person, firm or corporation, other than employees of Contractor, who or which contracts with Contractor or its Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the site. Whenever the word Subcontractor is used, it shall also mean sub-subcontractors.

(25) "Work" means everything required to be furnished and done by the Contractor under the contract, and shall include both Contract Work and Extra Work if applicable.

(26) "Work Order" means a completed and approved NYC RRP Work Order Form for a particular Property.

CHAPTER II
THE WORK AND ITS PERFORMANCE

ARTICLE 3 SCOPE AND CHARACTER OF THE WORK; PROGRAM MANAGEMENT; PROCEDURES; QUALITY MANAGEMENT; AUDIT BY INTEGRITY MONITOR

(A) Scope and Character of the Work. The scope of Work to be provided by Contractor pursuant to this requirements Contract shall include labor, supervision, materials, and other associated equipment and costs required to safely restore heat, hot water, and power to and to make temporary exterior and internal repairs necessary to allow residents to inhabit Properties assigned to Contractor by the City pursuant to Article 9 of this Contract.

(1) A general description of the scope of allowable services in a residential unit is described in the FEMA Guidelines.

(a) The City acknowledges that the FEMA Guidelines leave room for interpretation and, accordingly, has prepared a document entitled NYC RRP Scope Description setting forth the City's interpretation of the FEMA Guidelines and providing additional guidance. As new issues may arise during the Term requiring clarification, the City may revise the NYC RRP Scope Description from time to time during the Term and Contractor shall be bound by such revisions. The City shall post the NYC RRP Scope Description on a Web site accessible to Contractor. In case of a conflict between the FEMA Guidelines and the NYC RRP Scope Description, the NYC RRP Scope Description shall control.

(b) Contractor shall familiarize itself with the RRP guidance documents ("NYC RRP Guidance Documents"), posted by the City on a Web site, that explain the regulatory and permitting requirements related to the RRP, including New York City Department of Buildings permits and filing requirements; Con Ed, Long Island Power Authority ("LIPA"), and National Grid utility restoration procedures and forms, and the DEP Asbestos Inspection and Abatement guidance. Contractor is responsible for all filings and applications described in these documents. If and when such agencies and utilities change their procedures, the City, acting through its Project Manager, shall revise the NYC RRP Guidance Documents, place the revised NYC RRP Guidance Documents on a Web site, and notify Contractor; however, Contractor shall be obligated to comply with changed procedures when they become effective.

(2) In accordance with the FEMA Guidelines, work on Properties involves the use of raw, unfinished materials to provide only emergency protective measures. (For example, plywood covering may be used to provide temporary security of a damaged window.) Work on single- or two-family dwellings may include permanent repairs and replacements if they allow the occupants to return home more quickly. Work in multiple-unit dwellings is generally limited to labor and materials to provide temporary heat, hot water, and/or power for a period not to exceed 90 days.

(3) Contractor shall avoid disturbing asbestos to the greatest extent possible. However, if Contractor must remove asbestos in order to complete the work, it shall comply with laws concerning disposal and worker safety and the Environmental Health & Safety Requirements, attached hereto as Appendix A. Contractor shall comply with laws concerning safety and lead paint and it shall spray walls potentially containing lead paint prior to removing them. If necessary, Contractor shall engage appropriately certified or licensed asbestos inspectors and abatement subcontractors. The parties acknowledge that Work may involve the removal of moldy items; however, the scope of Work does not include mold abatement.

(4) With the exception of asbestos, Contractor shall move debris from the Work to the curb of the Property for disposal by the City. Contractor shall dispose of asbestos in conformance with Law.

(5) Contractor shall promptly repair, replace, restore or rebuild, as the Commissioner may deem necessary, any finished Work on a Property to the extent the Commissioner determines that the Work was not properly performed as an initial matter.

(6) Contractor shall produce and deliver data and reports relating to the services performed under this Contract as may be required by the City or any other State or federal governmental agency with jurisdiction. As directed by the Program Management Team, Contractor shall implement project controls and statusing protocols to ensure consistent and timely transmission of data and reports.

(7) Contractor shall comply with all directives issued by the Project Manager and Program Management Team consistent with the terms of this Contract.

(B) Program Management.

(1) The City shall engage a Customer Management Consultant to accept applications for participation in the RRP and to schedule Assessment Appointments pursuant to Article 9 of this Contract.

(2) The City shall designate a Project Manager to oversee the Work in accordance with all RRP protocols and policies pursuant to the requirements of this Contract and to serve as a liaison to other Agencies and utility companies.

(3) The City shall designate a Program Management Team, which shall consist of City employees and the Project Manager, to supervise the RRP and interface with the Integrity Monitor. In addition, the Contractor shall cooperate with the Integrity Monitor as set forth in Article 3(E) of this Contract.

(4) The City and/or FEMA may make City- or federal-owned property available to Contractor and Other Contractors for use as a construction staging area(s) for the RRP. License agreements concerning the use of such property, if available, will be executed separately from this Contract.

(C) Procedures.

(1) Where Contractor has responsibility for assessment of a Property, upon arrival to a Property for the Assessment Appointment, Contractor shall provide to the Property Owner the following documents attached hereto as Appendix B: the NYC Rapid Repairs Legal Right of Entry Form (the document that explains, in plain language, the Right-of-Entry Permit); the Right-of-Entry Permit; the Right-of-Entry Permit Request for Cancellation; and Statement of Limitations.

(2) Contractor shall ask the Property Owner to complete and sign the Right-of-Entry Permit and Statement of Limitations. Contractor must obtain the Right-of-Entry Permit and Statement of Limitations prior to conducting the Assessment or performing any other Work on the Property. If the Property Owner refuses to sign the Right-of-Entry Permit and Statement of Limitations, Contractor shall notify the Project Manager, pursuant to Article 9(G) of this Contract.

(3) Contractor shall submit electronic copies or, upon approval of the Project Manager, hard paper copies of the completed and signed Right-of-Entry Permit and Statement of Limitations to the Project Manager within 24 hours of receipt.

(4) During Contractor's first visit to an Property, except as set forth in paragraph 5 below Contractor shall assess the condition of the Property and record the planned work and quantities on the NYC RRP Work Order Form, as may be amended and distributed to Contractor during the Term by the Program Management Team, attached hereto as Appendix C.

(5) Where an assessment of a property has been completed previously by the Program Management Team, Contractor shall complete as much of the NYC RRP Work Order Form prior to visiting the property with the expectation that work can begin during the visit; provided, however, that no Work shall commence until an assessment is completed. Prior to initiating the work, Contractor shall do a quick reassessment of the property to complete missing data on the NYC RRP Work Order Form.

(6) Contractor must be accompanied by a designee of the Project Manager when the NYC RRP Work Order Form is first initiated (either for the Assessment Appointment or for starting the Work Order where a previous assessment was completed. The Project Manager, or designee will approve or request changes to the NYC RRP Work Order Form while on the Property.

(7) Contractor shall utilize tablet computers or other computerized means to complete the NYC RRP Work Order Form. Tablets will be provided by the Project Manager or Contractor as approved by the Project Manager. Prior to implementation of the tablet, data must be either hand written and transcribed into a database or through other method prescribed by the contractor. Once the tablets are issued, they shall be used by all contractors.

(8) Contractor shall electronically transmit or, upon approval of the Project Manager, transmit a hard paper copy of the NYC RRP Work Order Form to the Project Manager within 24 hours of completion of the Assessment Appointment.

(9) Contractor shall be responsible for scheduling appointments with the Property Owner to commence Work.

(10) Contractor shall not do Work that is not expressly approved for a particular Property on the NYC RRP Work Order Form consistent with this Contract, including the appendices, unless it has received written authorization from the Project Manager.

(11) Contractor is prohibited from performing or soliciting home improvement work, as the term "home improvement" is defined in

section 20-386(2) of the Admin Code, on a Property for which it performed Work pursuant to the RRP for a period of one year from March 31, 2013. 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 Admin Code, on a Property for which the Contractor performed Work pursuant to the RRP for a period of one year from March 31, 2013.

(D) Quality Management.

(1) The City through its Program Management Team shall implement an independent Quality Assurance and Quality Control Program (the "QAQC Program") to identify unnecessary, excessive, or inadequately described repairs listed on NYC RRP Work Order Forms, discrepancies in the Work completed and the NYC RRP Work Order Forms, the quality of workmanship, and timeliness of arrivals for Assessment Appointments, and other related items. Through the QAQC Program, the Program Management Team shall randomly sample completed NYC RRP Work Order Forms and compare them to completed Work on corresponding Properties, as well as employing other methods.

(2) There will be a zero tolerance policy for any abuse in the RRP and the City may declare the Contractor in default pursuant to Article 40 of this Contract based on findings of the QAQC Program.

(E) Audit by Integrity Monitor.

(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 other parties in connection with the RRP. Among other activities, the Integrity Monitor will:

(a) conduct audits and investigations to determine Contractor's compliance with the Law;
(b) 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 RRP;
(c) examine documents related to the operation of RRP in the possession of Contractor, that may relate to its responsibility;
(d) review payment requisitions for accuracy;
(e) audit disposal of contaminated and hazardous waste;

(f) review certified payrolls and refer anomalies to DEP;
(g) report any integrity issue immediately to DOI;
(h) refer any work quality and/or safety issue immediately to DEP and to DOI if the issue relates to the integrity of the Contractor;[1]
(i) review subcontractor approval documents;
(j) maintain a site presence; and
(k) investigate allegations of fraud in connection with the RRP.

(2) Contractor shall fully cooperate with the Integrity Monitor.

(3) Based on the Integrity Monitor's reports, the City may take remedial action or declare the Contractor in default pursuant to Article 40.

ARTICLE 4 COMPLIANCE WITH LAWS

(A) Contractor shall comply with all Laws applicable to this Contract and to the Work to be done hereunder.

(1) Right To Know. Without limiting the generality of the foregoing, 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.

(2) Noise Control Code Provisions. In accordance with the provisions 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

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[1] 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).

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.

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, Contractor, if Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan, in which Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by Department. In addition, Contractor's certified Construction Noise Mitigation Plan is subject to inspection by the Department in accordance with 15 RCNY Section 28-101. No Work may take place unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, 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.

(B) Procurement Policy Board Rules: This Contract is subject to the PPB Rules in effect on November 20, 2012. In the event of a conflict between the PPB Rules and a provision of this Contract, the PPB Rules shall take precedence.

(C) Licenses: Contractor shall ensure that its workers and its Subcontractors possess the licenses necessary to perform the Work.

(D) Contractor shall comply with 44 C.F.R. section 13.36. For the avoidance of doubt, Contractor is not subject to "grantee" or "subgrantee" requirements under such rule.

ARTICLE 5 PROTECTION OF PERSONS AND PROPERTY

(A) Safety is the City's highest priority. Contractor shall comply with the environmental health and safety requirements (the "EHS Requirements") attached hereto as Appendix A in the execution of Work. The EHS Requirements are consistent with OSHA and Best Practices. Contractor shall develop and implement an RRP-specific EHS Management Plan to ensure worker health and safety pursuant to the EHS Requirements. The Program Management Team shall oversee compliance with Contractor's EHS Management Plan.

(B) During the performance of the Work, Contractor shall take all reasonable precautions to protect its employees, persons occupying the Properties, City employees and officials, and the employees of Other Contractors from injury resulting from Contractor's and its Subcontractor's operations under this Contract. Contractor shall have the right to suspend the Work on a Property if an occupant's presence on the Property presents a safety risk and the occupant refuses to accommodate requests made to address safety issues. In addition, Contractor shall take all reasonable precautions to protect the Property and property of others against damage not necessary to the performance of the Work.

(C) As soon as is practicable, but no later than three (3) hours following an injury or accident, Contractor shall make a preliminary report of any accident to the Project Manager. No later than twenty-four hours following an injury or accident, Contractor shall make a full report of any accident in writing to the Project Manager.

CHAPTER III
TIME PROVISIONS

ARTICLE 6 COMMENCEMENT AND EXECUTION OF THE WORK

(A) Upon the Date of Execution, this Contract shall be effective as of November 20, 2012, and terminate on March 31, 2013 (the "Term"). Work in progress that was commenced pursuant to the Term Sheet shall be subject to the terms of this Contract except to the extent that compliance is not reasonably possible or able to be retroactively applied.

(B) Contractor shall execute the Work as safely, efficiently, and expeditiously as possible and shall prioritize Work on large multi-unit dwellings in order to maximize the total number of residents that may return to their homes by December 31, 2012. The Project Manager shall coordinate with the Contractor to identify the most critical multi-unit dwellings.

ARTICLE 7 [Intentionally Omitted]

ARTICLE 8 [Intentionally Omitted]

ARTICLE 9 WORK ASSIGNMENTS & SCHEDULES

(A) The City shall assign Properties to Contractor and Other Contractors based on geographical sub-areas of New York City. When it assigns Properties, the

City shall provide a description of the Property's property type, number of units, utility power service status, utility gas service status, the Property's classification with a green or yellow sticker by the New York City Department of Buildings (the "DOB"),[2] and other available information that facilitates planning and executing the Work.

(B) On a weekly basis, the City shall analyze and compare Contractor's progress to the progress of Other Contractors, focusing on the number of Properties and the number of residential units in such Properties for which Work on the NYC Work Orders have been completed. Based on the weekly analysis and comparison, the City shall assign Work to Contractor and Other Contractors so that higher-performing contractors receive more Work than lower-performing contractors.

(C) The City, through its Customer Management Consultant, is responsible for the intake of Property owners into the RRP and setting appointments for Assessments ("Assessment Appointments"). The City is responsible for ensuring that Property owners are eligible for assistance through the RRP. Buildings that contain standing water are not eligible for work under the RRP until the water is removed by the New York City Fire Department or a third party.

(D) The City is responsible for determining whether a Property is structurally sound. Contractor shall make determinations concerning building safety and precautions that are necessary to protect workers, for example, whether respirators are necessary to protect workers from mold.

(E) The City shall schedule Assessment Appointments during one of three windows: 8:00 a.m. to 12:00 noon; 12:00 noon to 5:00 p.m.; and 5:00 p.m. to 9:00 p.m. The City shall notify Contractor of Assessment Appointments at least 24 hours in advance. Contractor shall maintain close communication and coordinate with the Customer Management Consultant to ensure that Contractor has the appropriate resource capacity to keep pace with the appointments and ensure that no appointments are missed. Contractor shall assign staff as necessary to expertly and efficiently communicate and coordinate with the Customer Management Consultant and Project Management Team.

(F) It is expected that Contractor will perform Work on single- and two-family Properties from 8:00 a.m. to 9:00 p.m. to the extent allowable on a particular Property by a Property Owner or longer if permitted by the Project Manager.

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[2] A green sticker indicates that DOB observed no apparent structural hazard and a yellow sticker indicates that conditions exist at the building that require the owner to make repairs and may restrict the use of the building (specific restrictions will be listed on the sticker).

Contractor may perform Work on larger multi-unit dwellings at any time in compliance with Law. Contractor has the discretion to staff the Work in a way that will allow the Work to be prosecuted in the safest, most efficient, and most expeditious manner.

(G) As soon as is practicable after the problem arises, Contractor shall notify the Project Manager if the Property Owner was not present at the Property for the scheduled Assessment Appointment; refuses to sign the Right-of-Entry Permit or Statement of Limitations; or gives Contractor Right-of-Entry Permit Request for Cancellation; or if there is a safety hazard that would endanger the health and safety of Contractor or Property occupants if Work were to be commenced or continue.

(H) If Contractor believes that the activities of the Project Manager and/or Customer Service Management Consultant are causing delays in the Work, Contractor shall notify the Program Management Team as soon as is practicable.

ARTICLE 10 **[Intentionally Omitted]**

CHAPTER IV
SUBCONTRACTS AND ASSIGNMENTS

ARTICLE 11 **SUBCONTRACTS**

(A) Contractor may subcontract a portion of the Work. The City encourages Contractor to enter into subcontracts with firms that are certified minority and women-owned business enterprises ("M/WBEs").

(B) Contractor shall not enter into any Subcontracts for the performance of the obligations, in whole or part, under this Contract, without the prior written approval of the Department. Before entering into any Subcontracts, Contractor must submit a written statement to rapidrepair@cityhall.nyc.gov that states the name and address of the proposed Subcontractor, EIN number, anticipated scope of work, the estimated value of the 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.

(C) 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.

(D) The Commissioner will notify Contractor within 48 hours whether the proposed Subcontractor is approved or not approved or longer if additional information is required to make a determination. If the proposed Subcontractor is not approved, Contractor may thereupon submit another proposed Subcontractor unless Contractor decides to do the Work. No prospective Subcontractor shall be permitted to do Work or to enter a Property unless approved.

(E) Before entering into any Subcontract hereunder, 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 Subcontract shall expressly stipulate that all the labor performed and materials furnished thereunder shall strictly comply with the requirements of this Contract. Without limiting the generality of the foregoing, all Subcontracts shall contain provisions specifying that:

(1) the work performed by the Subcontractor must be in accordance with the terms of the Contract between the Department and Contractor;

(2) nothing contained in such Subcontract shall impair the rights of the Department;

(3) nothing contained therein, or under this Contract between the Department and Contractor shall create any contractual relationship between the Subcontractor and the Department, and

(4) the Subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Contract between the Department and Contractor.

(F) The City's approval of a Subcontractor shall not relieve Contractor of any of its responsibilities, duties, and liabilities hereunder. 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 the agent or employee of Contractor to the extent of its Subcontract.

(G) Contractor shall be responsible for ensuring that all Subcontractors performing Work maintain any insurance required by Law.

(H) Contractor shall promptly, upon request, file with the Program Management Team a confirmed copy of all such Subcontracts.

(I) Contractor shall make all payments to any Subcontractors in compliance with the payment provisions of this Contract.

ARTICLE 12 ASSIGNMENTS

(A) Contractor shall not assign, transfer, convey, sublet 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, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignment. When used in Article 12, 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 Contractor, if 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.

(B) 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.

(C) Failure to obtain the prior 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 Contractor, its assignees, transferees, or Subcontractors, who shall forfeit or lose all monies therefore earned under the Contract, except so much as may be required to pay Contractor's employees.

(D) The provisions of this clause shall not hinder, prevent or affect an assignment by Contractor for the benefit of its creditors made pursuant to the Laws of the State of New York.

(E) The City may assign this Contract to FEMA or any corporation, agency, or instrumentality having authority to accept such assignment with the consent of Contractor, which shall not be unreasonably withheld.

CHAPTER V
CONTRACTOR'S SECURITY AND GUARANTY

ARTICLE 13 PERFORMANCE AND PAYMENT BONDS

(A) Contractor shall obtain performance and payment bonds for not less than $5,000,000 (five million dollars) and shall adjust the amount of the bonds in

increments of $5,000,000 (five million dollars) at the request of the City as the value of the Work is increased.

(B) 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.

(C) 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 14 [Intentionally Omitted]

ARTICLE 15 REQUIRED INSURANCE COVERAGE.

(A) Types of Insurance: Contractor shall procure and maintain the following types of insurance. Such insurance shall be maintained from the effective date of this Contract until this Contract terminates. All insurance shall meet the requirements set forth in this Article 15. 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 Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(1) Commercial General Liability Insurance: 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 in the amount of at least five million dollars ($5,000,000) per occurrence. In the event such insurance contains an aggregate limit, this aggregate limit shall apply on a per Project basis applicable exclusively to this Contract and such per Project aggregate shall be at least ten million dollars ($10,000,000). 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; independent contractors; explosion, collapse and underground (XCU); and incidental malpractice.

Such Commercial General Liability Insurance shall name the City as an Additional Insured. 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 (covering all locations at which the Work is performed), and provide completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37 (covering all locations at which the Work is performed).

(2) Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance: 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.

(3) Commercial Automobile Liability Insurance: 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 in the amount of one million dollars ($1,000,000) each accident combined single limit. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. 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.

(4) Contractors Pollution Liability Insurance: 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 and mold), including any loss, cost or expense incurred as a result of any cleanup of pollutants (including asbestos and mold) or in the investigation, settlement or defense of any claim, suit, or proceedings arising from the operations under this Contract. Such insurance shall be in the amount of at least two million dollars ($2,000,000) per occurrence and at least five million dollars ($5,000,000) aggregate. Such insurance shall be in Contractor's name and list the City as an Additional Insured. Coverage shall include, without limitation, (i) loss of use of damaged property or of property that has not been physically injured, (ii) transportation, and (iii) non-owned disposal sites.

(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 Contractor for operations under this Contract.

(b) If such insurance is written on a claims-made policy, such policy shall have a retroactive date on or before the effective date of this Contract, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years from the time the Work under this Contract is completed.

(B) General Requirements for Insurance Coverage and Policies:

(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 New York City Office of the Corporation Counsel.

(2) 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.

(3) No policy shall have a self-insured retention above $50,000 unless expressly authorized by the Commissioner.

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

(5) The City's limits of coverage for all types of insurance required pursuant to this Article 15 shall be the greater of (i) the minimum limits set forth in this Article 15 or (ii) the limits provided to Contractor as Named Insured under all primary, excess and umbrella policies of that type of coverage.

(6) Contractor may satisfy its insurance obligations under this Article 15 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(7) Policies of insurance provided pursuant to this Article 15 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(8) Policies of insurance provided pursuant to this Article 15, other than Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance, and Commercial Automobile

Liability Insurance, shall include a waiver of the right of subrogation with respect to all insureds named therein.

(9) Policies of insurance provided pursuant to this Article 15 shall provide that notice under the policy to the City as Additional Insured shall be addressed to each of the following: (1) the Commissioner pursuant to Article 15(F); and (2) Comptroller's Office, Attn: Office of Contract Administration, Municipal Building, 1 Centre Street, Room 835, New York, NY 10007.

(10) Policies of insurance provided pursuant to this Article shall contain no exclusions or endorsements which are not acceptable to the City.

(C) Proof of Insurance:

(1) For Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance, Contractor shall submit proof of insurance prior to Contract execution on one of the following forms: C-105.2 Certificate of Worker's 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. ACORD forms are not acceptable.

(2) For all types of insurance required by this Article 15 other than Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance, Contractor shall submit proof of insurance on Certificate(s) of Insurance acceptable to the Commissioner within ten (10) days of the Date of Execution of this Contract.

(a) All such Certificates of Insurance shall certify (i) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; (ii) for Commercial General Liability Insurance, that the City is an Additional Insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 10 and CG 20 37; (iii) for Contractors Pollution Liability Insurance, that the City is an Additional Insured; (iv) the company code issued to each insurance company by the National Association of Insurance Commissioners (the NAIC number); and (v) 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 attached as Appendix D hereto or copies of all policies referenced in such Certificate

of Insurance as certified by an authorized representative of the issuing insurance carrier.

(3) Proof of insurance confirming renewals of insurance policies (or new policies) shall be submitted to the Commissioner before the expiration date of coverage of policies required under this Contract. Such proofs of insurance shall comply with the requirements of this Article 15(C). Failure to provide such proofs of insurance shall be grounds to suspend payments to Contractor.

(4) Acceptance by the Commissioner of a certificate does not excuse the Contractor from securing insurance consistent with all provisions of this Article or of any liability arising from its failure to do so.

(D) Operations of Contractor:

(1) 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.

(2) In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Commissioner. The Commissioner may also declare Contractor in default for failure to maintain required insurance.

(3) In the event Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 15 shall be cancelled or terminated (or has been cancelled or terminated) for any reason, 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, Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Article 15.

(4) Whenever notice of loss, damage, occurrence, accident, claim or suit to an insurance company is required under a policy maintained in accordance with this Article 15 (whether on behalf of Contractor as Named Insured or the City as Additional Insured), Contractor shall provide timely notice to all insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to Contractor's own employees). Such

notices shall set forth the number of the insurance policy, the name of the Named Insured, the date and location of the incident, and the identity of the persons injured or property damaged, and attach copies of all written accident reports, claims, pleadings and other relevant documentation. For any policy on which the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured, as well as the Named Insured." Copies of all such notices shall be simultaneously sent to the City at each of the following addresses: (a) Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York, 10007; and (b) Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(E) Subcontractor Insurance: This Contract, including this Article 15, 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, as an additional insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

(F) Commissioner's address: Wherever reference is made in this Article 15 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to: Mary Pazan, Assistant Commissioner, c/o Iris Ojidanc, Department of Environmental Protection, 59-17 Junction Boulevard, 17th Floor, Flushing, New York 11373.

(G) Materiality/Non-Waiver: Contractor's failure to secure policies in complete conformity with this Article 15 or to do anything else required by this Article 15 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.

(H) Other Remedies: Insurance coverage provided pursuant to this Article 15 or otherwise shall not relieve 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 16 MONEY RETAINED AGAINST CLAIMS

(A) If any claim shall be made by any person or entity (including Other Contractors with the City on this Project) against the City or against Contractor and the City for any of the following for which Contractor may be liable under the Contract, but only to the extent caused by the Contractor:

(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., as referred to in Article 50 hereof; or

(3) Damage claimed to have been caused directly or indirectly by the failure of 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 Contractor to substitute other satisfactory security in lieu of the monies so withheld.

(B) If an action on such claim is timely commenced and the liability of the City, or 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 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 16, and return the balance, if any, without interest, to Contractor.

(C) If no action is commenced upon such claim within the time limited therefor by Law, the Comptroller, upon written demand by Contractor, shall return the amount so held, without interest.

ARTICLE 17 WARRANTY OF SUPPLIES

(A) Contractor warrants that the parts and equipment incorporated into the goods being serviced are standard new equipment and current model of regular stock product with all parts regularly used with the type of equipment serviced and that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Equipment provided to Property Owner must contain the standard manufacturer's warranty.

(B) The Commissioner shall give written notice to Contractor of any breach of the warranties in this Article 17.

(C) The provisions of this Article 17 shall not be deemed to create any new right of action in favor of third parties against Contractor or the City.

ARTICLE 18 **[Intentionally Omitted]**

CHAPTER VI
CHANGES AND EXTRA WORK & RESOLUTION OF DISPUTES

ARTICLE 19 **CONTRACT CHANGES**

(A) Changes may be made to this Contract only as duly authorized in writing by the ACCO or his/her designee, and in accordance with the Charter and the PPB rules and shall be reflected in a change order. All such changes, modifications and amendments will become a part of the original Contract. Any work so ordered shall be referred to as Extra Work and shall be performed by Contractor. Contractors deviating from the requirements of the Contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. A Work Order shall not be deemed a change order.

(B) Contract changes will be made only for Extra Work necessary to complete the Work included in the original scope of the Contract, and for non-material changes to the scope of the Contract. Changes are not permitted for any material alteration in the scope of Work. An approved Work Order is not Extra Work.

(C) Contractor will be entitled to a price adjustment for Extra Work performed pursuant to a written change order. If any part of the Contract Work is necessarily delayed by a change order, Contractor may be entitled to an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways:

(1) By unit prices specified in the Contract;

(2) By agreement of a fixed price;

(3) By time and material records; and/or

(4) In any other manner approved by the CCPO.

(D) Where the cost of the change orders has been negotiated in the absence of established cost history, the costs are subject to verification by post-audit. If the audits reveal that Contractor's costs for the change order work were inaccurately stated during negotiations, the Department may recoup the amount by which the costs were inaccurately stated by proportionately

reducing the price of the change order. This remedy is not exclusive and is in addition to all other rights and remedies of the City.

(E) Any payments for change orders are subject to pre-audit by the Engineering Audit Office and may be post-audited by the Comptroller and/or the Department.

(F) Any contract change order which amends a unit price, cancels required units, or adds a new type of unit item to the Contract must be approved in writing by the ACCO.

ARTICLE 20 **[Intentionally Omitted]**

ARTICLE 21 **[Intentionally Omitted]**

ARTICLE 22 **PERFORMANCE OF EXTRA OR DISPUTED WORK**

(A) While Contractor or any of its Subcontractors is performing Extra Work on a Time and Material Basis ordered by the Commissioner or authorized representative (unless payment thereof is to be made by lump sum or at unit prices previously agreed upon), or is performing disputed Work, or complying with a determination or order under protest in accordance with Article 24 hereof, in each such case Contractor shall furnish the Project Manager daily with three (3) copies of written statements signed by Contractor's representative showing:

(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

(2) The nature and quality 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 purchased or rented.

(B) A copy of such statement will be countersigned by the Project Manager noting thereon any items not agreed to or questioned, and will be returned to Contractor within two (2) days after submission.

(C) Contractor and its Subcontractors, when required by the Commissioner, or the Comptroller, shall also produce for inspection, at the office of Contractor or Subcontractor, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, canceled checks and any other related documents 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. Contractor and Subcontractors shall permit the Commissioner and the Comptroller to make extracts therefrom, or copies thereof, as they or either of them may desire.

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

(E) 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 23 **[Intentionally Omitted]**

ARTICLE 24 **RESOLUTION OF DISPUTES:**

(A) Except as provided in paragraphs (A)(1) and (A)(2) of this Article 24, all disputes between the City and Contractor that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the PPB Rules. This procedure shall be the exclusive means of resolving any such disputes.

(1) This section 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.

(2) For construction and construction-related services, this section 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 Contractor's work to the Contract, and the acceptability and quality of Contractor's work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, Project Manager, or Program Management Team or other designee of the Commissioner makes a determination with which the Contractor disagrees.

(B) All determinations required by this section shall be 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 section shall be deemed a

non-determination without prejudice that will allow application to the next level.

(C) During such time as any dispute is being presented, heard, and considered pursuant to this section, the Contract terms shall remain in full force and effect; the Contractor shall continue to perform work in accordance with the Contract and as directed by the ACCO or Engineer, Resident Engineer, Engineering Audit Officer, Project Manager, Program Management Team or other designee of the Commissioner; and the City shall continue to make payments otherwise properly due and payable hereunder. Failure of Contractor to continue the work as directed shall constitute a waiver by Contractor of any and all claims being presented pursuant to this section and a material breach of Contract.

(D) Presentation of Dispute to Commissioner.

(1) Notice of Dispute and Agency Response. Contractor shall present its dispute in writing ("Notice of Dispute") to the Commissioner within the time specified herein, or, if no time is specified, 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 Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer Engineering Audit Officer, Project Manager, Program Management Team 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 Contractor to produce any requested material whose relevancy Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by Contractor of its claim.

(2) Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or

construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, Project Manager, Program Management Team 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 dispute 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 other contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the contractor initiating the dispute.

(3) 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 Contractor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, Project Manager, Program Management Team or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.

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

(E) Presentation of Dispute to the Comptroller. Before any dispute may be brought by Contractor to the CDRB, Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

(1) Time, Form, and Content of Notice. Within thirty (30) days of receipt of a decision by the Commissioner, Contractor shall submit to the Comptroller and to the Commissioner a Notice of Claim regarding its dispute with the Department. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) Contractor contends the dispute was

wrongly decided by the Commissioner; (ii) a copy of the decision of the Commissioner, and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. Contractor may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.

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

(3) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 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 Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by 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.

(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 5(c) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.

(F) Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

(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 section as may be necessary in the execution of the CDRB's functions,

including, but not limited to, granting extensions of time to present or respond to submissions;

(2) the City Chief Procurement Officer ("CCPO") or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction 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

(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 individuals 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 represent persons, companies, or organizations having disputes with the City.

(G) Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, Contractor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

(A) Form and Content of Petition by Contractor. Contractor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor contends that the dispute was wrongly decided by the Commissioner; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller's Office. Contractor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Commissioner and the Comptroller.

(B) Department Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the Department shall respond to the statement of Contractor and make available to the CDRB all material it submitted to the Commissioner and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at

OATH's offices and one to Contractor. Extensions of time for submittal of the Department response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.

(C) Further Proceedings. The Board shall permit Contractor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the Department 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 Contractor nor the Department may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, 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 CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

(D) CDRB Determination. Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

(E) Notification of CDRB Decision. The CDRB shall send a copy of its decision to Contractor, the Commissioner, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, and the PPB. A decision in favor of the vendor 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 CDRB's decision.

(F) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB'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 Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB'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 CDRB in accordance with Section 4-09 of the PPB Rules.

(H) Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Commissioner or CDRB to make a binding and final decision pursuant to this section.

ARTICLE 25 CONTRACTOR EVALUATION

In addition to the ongoing QAQC Program described in Article 3, Contractor's performance shall be evaluated by the City at the conclusion of the Contract term. A copy of the evaluation will be sent to Contractor not later than fifteen (15) Days of the end of the term and Contractor may respond in writing to the performance report. Such responses shall be submitted to the Project Manager not later than fifteen (15) Days after a copy of the evaluation is sent to Contractor. The response will be affixed to the evaluation. Failure to respond may result in inability to challenge the review of Contractor's performance when a bid is evaluated without the benefit of Contractor's response to the report.

ARTICLE 26 LIABILITY FOR OTHER CONTRACTORS' WORK

(A) 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 Project Manager, 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.

(B) 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 27 RESERVED

CHAPTER VII
POWERS OF THE COMMISSIONER

ARTICLE 28 THE COMMISSIONER

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

(A) To review and determine any and all questions in relation to this Contract and its performance;

(B) To modify or change this Contract so as to require the performance of Extra Work (subject, however to the limitations specified in Article 19 hereof); and

(C) To suspend the whole or any part of the Work whenever in his/her judgment such suspension is required in the interest of the City.

ARTICLE 29 **RESERVED**

CHAPTER VIII
LABOR PROVISIONS

ARTICLE 30 **EMPLOYEES**

(A) Contractor and its Subcontractors shall not employ on the Work:

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

(4) 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 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 Contractor of this requirement may, upon certification of the Commissioner, be considered as proper and sufficient cause for declaring Contractor to be in default, and for the City to take action against Contractor as set forth in Article 44 of the Contract, or such other Article of this Contract as the Commissioner may deem proper.

(B) As required by Labor Law section 220-h, if applicable, and if the total cost of the Work under this Contract is at least two hundred fifty thousand dollars

($250,000), all laborers, workers, and mechanics employed in the performance of the Contract on the public work site, either by Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten hours in duration.

(C) Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Contractor shall immediately give notice to the Department, including all relevant information with respect thereto.

ARTICLE 31 WAGE REQUIREMENTS; WORKING CONDITIONS

(A) Contractor shall strictly comply with all applicable Federal, State and local Laws, including but not limited to the payment of wages compliant with all requirements of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by the U.S. Department of Labor regulations (29 C.F.R. Part 5), N.Y. Labor Law sections 220 or 230, Administrative Code section 6-109, and City Executive Order 102 (2007). Davis-Bacon wage rates are available on-line at http://wdol.gov/dba.aspx. City prevailing wage rates are available on-line at http://www.comptroller.nyc.gov/bureaus/bll/schedules.shtm. The governing wage rates and supplemental benefits are those in effect at the time the Work is being performed. If there is a conflict between Davis-Bacon wage rates or City prevailing wage rates, Contractor shall pay the employee whichever wage rate is higher for a given title. For the purposes of this Contract, the wages to be paid are as set forth in Appendix E. Such compliance is a material term of this Contract.

(B) Contractor specifically agrees, as required by Labor Law Sections 220, 220-d, or 230, 231, 232, or Administrative Code 6-109, or sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by the U.S. Department of Labor regulations (29 C.F.R. Part 5) as amended, if applicable, that:

(1) Hours of Work: Pursuant to Labor Law 220, no laborer, worker, or mechanic in the employ of Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Contract shall be permitted or required to work more than eight (8) hours in any one (1) Day, or more than five (5) Days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

(2) In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the Work contemplated by this Contract as a result of such restrictions upon the number of hours and Days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) Day; or five (5) Days in any one (1) week; provided, however, that upon application of any Contractor, the Commissioner shall have first certified to the Commissioner of Labor of the State of New York (hereinafter "Commissioner of Labor") that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220(2).

(3) Failure of the Commissioner to make such a certification to the Commissioner of Labor shall not entitle Contractor to damages for delay or for any cause whatsoever.

(C) Minimum Wages: Except for employees whose wage is required to be fixed pursuant to the Davis-Bacon Act, Labor Law sections 220 or 230, or Administrative Code 6-109, all persons employed by 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.

(D) Working Conditions: No part of the Work, labor or services shall be performed or rendered by 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. Notwithstanding the foregoing, the parties acknowledge that the Properties were damaged by Hurricane Sandy and present conditions which require protective gear and other precautions pursuant to Article 5 of this Contract. Compliance with the safety, sanitary and factory inspection Laws of the state in which the Work is to be performed and the EHS Requirements shall be *prima facie* evidence of compliance with this Article 31.

(E) Wage Enforcement: Contractor agrees to pay for all costs incurred by the City in enforcing prevailing or other governing wage requirements, including the

cost of any investigation conducted by or on behalf of DEP or the Comptroller, where the City discovers a failure to comply with any of the requirements of this Article 31 by Contractor or its Subcontractor(s). Contractor also agrees that should it fail or refuse to pay for any such investigation, DEP is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

Labor Law Section 220 and Section 220-d, as amended, provide that this Contract shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than: the stipulated wage scale as provided in Labor Law Section 220, as amended, or the stipulated minimum hourly wage scale as provided in Labor Law Section 220-d, as amended.

In addition, Labor Law section 238 provides that this Contract shall be forfeited and no sum paid for any Work done hereunder on a second conviction for failing to pay the stipulated wage scale as provided in Labor Law Section 231.

(F) For any breach or violation of either paragraphs (A), (B) or (C) of this Article 31, the party responsible therefor 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 Comptroller, 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 Contractor of the withholding or recovery of such sums by the City.

(G) A determination by the Comptroller that Contractor and/or its Subcontractor willfully violated Labor Law section 220 or 230 will be forwarded to the City's five District Attorneys for review.

(H) Contractor's or Subcontractor's noncompliance with this Article and the Davis-Bacon Act, Labor Law sections 220 and 230 or Administrative Code section 6-109, may result in an unsatisfactory performance evaluation and the

Comptroller may also find and determine that Contractor or Subcontractor willfully violated the New York Labor Law or Administrative Code.

(1) An unsatisfactory performance evaluation for noncompliance with this Article may result in a determination that Contractor is a non-responsible bidder on subsequent procurements with the City and thus a rejection of a future award of a contract with the City, as well as any other sanctions provided for by Law.

(2) Labor Law sections 220-b and 235, as amended, provides that when two (2) final determinations have been rendered against a contractor or subcontractor within any consecutive six (6) year period determining that such contractor or subcontractor has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor Law and this Article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work or public building service projects are rendered simultaneously, such contractor or subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with the City for a period of five (5) years from the second final determination. Likewise, Administrative Code Section 6-109(e)(1)(e) provides that when two (2) final dispositions have been entered against a contractor or subcontractor within any consecutive six (6) year period determining that such contractor or subcontractor failed to comply with the wage, benefits, anti-retaliation, record-keeping, or reporting requirements of Section 6-109, such contractor or subcontractor, and any of its principals or officers who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any City service contract for a period of five (5) years from the date of the second disposition. Pursuant to Labor Law sections 220-b and 235, if the final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor or subcontractor shall be ineligible to submit a bid on or be awarded any public work contract with the City for a period of five (5) years from the first final determination.

(3) Labor Law sections 220-b and 235 and Administrative Code section 6-109, as amended, provide that Contractor or Subcontractor found to have violated this Article 31 may be directed to make payment of wages or supplements including interest found to be due, and Contractor or Subcontractor may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

(I) Contractor and its Subcontractors shall post in prominent and conspicuous places in each and every plant, factory, building, and structure where

employees of Contractor and its Subcontractors engaged in the performance of this Contract are employed, notices furnished by the City, in relation to prevailing wages and supplements, living wages, minimum wages and other stipulations contained in the Davis-Bacon Act, sections 220, 220-h, and 231 of the Labor Law, or section 6-109 of the Administrative Code and Contractor and its Subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until the end of the Contract term or, for individual Properties, until the end of the Work at the Property.

(J) Contractor shall strictly comply with all of the provisions of Articles 31(K)(1) through 31(K)(5), below, and provide for all workers, laborers or mechanics in its employ, the following:

(1) Notices Posted: Post, in a location designated by the City, schedules of prevailing or other governing wages and supplements for the RRP, a copy of all re-determinations of such schedules for the RRP, the Workers' Compensation Law section 51 notice, all other notices required by Law to be posted, the City notice that this Project is work on which each worker is entitled to receive Davis-Bacon wage rates or the prevailing or other governing wages and supplements for the occupation at which he or she is working, and all other notices which the City directs Contractor to post. Contractor shall provide a surface for such notices which is satisfactory to the City. Contractor shall maintain and keep current such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall maintain such notices during the Contract term; and

(2) Daily Sign-in Sheets: Maintain daily sign-in sheets, and require that Subcontractors maintain daily sign-in sheets for its employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started, the last four digits of the Social Security number, the time the employee began Work, and the time the employee left Work, until the end of the Contract Term unless exception is granted by the Comptroller upon application by the Agency. In the alternative, subject to the approval of the CCPO, Contractor and Subcontractor may maintain an electronic or biometric sign-in system, which provides the information required by this Article 31(K)(2); and

(3) Individual Employee Information Notices: Pursuant to Labor Law 220 or Administrative Code 6-109, if applicable, distribute a notice, to each worker, laborer, mechanic or covered employee employed under this Contract, in a form provided by DEP, that each worker, laborer, mechanic, or covered employee is entitled to receive the prevailing or

governing rate of wages and supplements or benefits for the occupation at which he or she is working. Such notice, pursuant to Labor Law 220-h, if applicable, shall also include a statement that, that each worker, laborer or mechanic be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten (10) hours in duration. Such notice shall be distributed to each worker before he or she starts performing any Work of this Contract and with the first paycheck after July first of each year. Worker, laborer, mechanic or covered employee includes employees of Contractor and all Subcontractors and all employees of suppliers entering the Site. At the time of distribution, Contractor shall have each worker, laborer, mechanic, or covered employee sign a statement, in a form provided by DEP, certifying that the worker has received the notice required by this Article 31, which signed statement shall be maintained with the payroll records required by this Contract; and

(i) As required by Labor Law 220, Contractor and each Subcontractor shall notify each worker, laborer or mechanic employed under this Contract in writing of the prevailing rate of wages for their particular job classification. Such notification shall be given to every worker, laborer and mechanic on their first pay stub and with every pay stub thereafter; and

(4) Site Laminated Identification Badges: 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). Further, require as a condition of employment on a Property, 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

(5) Language Other Than English Used On Site: Provide the ACCO notice when three (3) or ten percent (10%) or more employees (worker and/or laborer and/or mechanic) on the Property, at any time, speak a language other than English. The ACCO will then provide Contractor the notices in Article 31(K)(1) in that language or languages as may be required. Contractor is responsible for all distributions under Article 31; and

(6) Provision of Records: Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Project Manager, the Commissioner, the ACCO, the EAO, or

the Comptroller, such records as are required to be kept by this Article 31(K); and

(7) If this Contract is for an amount greater than one million dollars ($1,000,000), checks issued by Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by DEP). For any Subcontract for an amount greater than seven hundred and fifty thousand dollars ($750,000), checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by DEP).

(K) The failure of Contractor or Subcontractor(s) to comply with the provisions of Articles 31(K)(1) through 31(K)(7) may result in the Commissioner declaring Contractor or Subcontractor(s) in default and/or the withholding of payments otherwise due under the Contract.

(L) Contractor and its Subcontractors shall keep such employment and payroll records as are required by the Davis-Bacon Act, sections 220 or 233 of the Labor Law, or Administrative Code 6-109.

(M) At the time Contractor makes application for each partial payment and for final payment, Contractor shall submit to the Commissioner a written payroll certification, in the form provided by this Contract, of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Labor Law Sections 220, 230, or Administrative Code 6-109, and of compliance with the training requirements of Labor law Section 220-h set forth in Article 30, if applicable. This certification of compliance with the provisions of this Article shall be a condition precedent to payment and no payment shall be made to Contractor unless and until each such certification shall have been submitted to and received by the Commissioner.

(N) This Contract is executed by Contractor with the express warranty and representation that Contractor is not disqualified under the applicable provisions of the Labor Law or Administrative Code for the award of the Contract.

(O) 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 32 RESERVED

ARTICLE 33 BOOKS AND RECORDS

(A) Maintenance. Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

(B) Retention of Records. Contractor agrees to retain all books, records, and other documents relevant to this Contract for six (6) years after the final payment or termination of this Contract, whichever is later. City, State and Federal auditors or any other persons duly authorized by the Department shall have full access to and the right to examine any of said materials during said period.

(C) No Removal of Records from Premises. Where performance of this Contract involves use by Contractor of Department papers, files, data or records at Departmental facilities or offices, Contractor shall not remove any such papers, files, data or records therefrom without the prior approval of the Commissioner.

(D) Contractor shall grant access to the State, the City, FEMA, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of Contractor that are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, and transcriptions. Contractor shall retain all books, documents, papers or records relating to the services performed under this Contract for three years after final payment under this Contract is made and all other pending matters are closed.

ARTICLE 34 PAYROLL REPORTS

(A) Contractor shall maintain the original payrolls or transcripts thereof which Contractor and its Subcontractor(s) are required to maintain pursuant to Labor Law sections 220 or 233 or Administrative Code 6-109. In the event that those provisions do not apply to this Contract, Contractor is nonetheless required to keep records of the hours worked and the amounts paid, for each of the employees working under this Contract. Contractor and Subcontractor(s) shall submit original payrolls or transcripts, subscribed and affirmed by it as true, with each and every payment requisition. Contractor and Subcontractor(s) shall produce within five (5) Days on the Site of the Work and upon a written order of the Project Manager, the Project Management Team, the Commissioner, the ACCO, the EAO, or the Comptroller, such original payrolls or transcripts thereof, subscribed and affirmed by it as true, and the statements signed by each worker pursuant to this Contract. In addition, Contractor and Subcontractor(s) shall furnish to the Project Manager upon written demand any other information to satisfy the Project Manager that the Davis-Bacon Act, Contract Work Hours and Safety Act, Labor Law or

Administrative Code and any other relevant section of this Contract, as to the hours of employment and rates of wages, are being observed. Contractor shall maintain the payrolls or transcripts thereof for six (6) years from the date of completion of the Work on this Contract.

(B) When directed by the Project Manager, Contractor or Subcontractor shall provide the Project Manager with an attendance sheet for each Day on which Work is performed on the Site. Such attendance sheet shall be in a form acceptable to DEP and shall provide information for employees of Contractor and Subcontractor(s).

CHAPTER IX
PARTIAL AND FINAL PAYMENTS

ARTICLE 35 PAYMENT

(A) The Program Management Team, in consultation with Contractor, shall establish a fair and reasonable unit price structure or alternative price structure, which may be based on RS Means and the applicable regional multiplier and which may include time and materials for certain Work, no sooner than December 4, 2012. Upon establishment of such price structure, Contractor shall be paid for all Work properly performed in accordance with this Contract based on the price structure beginning with the effective date of this Contract, provided that Contractor does not terminate pursuant to the last sentence of this paragraph. Notwithstanding the prior sentence, and notwithstanding establishment of the new price structure, Contractor shall **initially** be paid for all Work properly performed in accordance with this Contract, for the period between the effective date of this Contract and the effective date of the new price structure, based on time and materials records consistent with the provisions of Article 35(B). Thereafter, the value of such Work shall be computed under the new price structure. In the event that the amount paid by the City for such Work (i.e., the Work performed between the effective date of this Contract and the effective date of the new price structure) exceeds the amount due for such Work under the new price structure, such excess shall be applied to subsequent Work done by the Contractor until the excess no longer exists. Once the excess no longer exists, the Contractor shall be paid for additional subsequent Work pursuant to the provisions of the new price structure. Pursuant to Article 43(B), Contractor may terminate this Contract within 72 hours of notification of the price structure.

(B) If the Contractor terminates pursuant to Article 35(A), payment for Work shall be based on time and material records for Work properly performed in accordance with this Contract through the date that the City establishes the

new price structure, which shall be no sooner than December 4, 2012, plus five days for demobilization. The price to be paid for such Work shall be the actual and reasonable cost of the items set forth below, calculated in accordance with the formula specified therein, if any. Items in numbers (3) though (11), below, are deemed to be general conditions.

(1) Necessary materials (including sales and personal property taxes); plus

(2) Necessary direct labor, including payroll taxes (subject to statutory wage caps), supplemental benefits, and overtime necessary to complete the Work under the terms of this Contract; plus

(3) Necessary superintendence labor, including payroll taxes (subject to statutory wage caps), supplemental benefits, and overtime necessary to complete the Work under the terms of this Contract, including Managers, Project Managers, Engineers, Project Engineers, Superintendents, and Safety Coordinators; plus

(4) Necessary security personnel, including payroll taxes (subject to statutory wage caps), supplemental benefits, and overtime necessary to complete the Work under the terms of this Contract; plus

(5) Necessary temporary housing costs, per diem, and out-of-area travel costs for employees residing more than 100 miles outside of New York City from the place of residence to Contractor's home office, temporary site office, or the Properties, and local travel between Contractor's home office, site office, Properties, and yard facility used for the performance of the Work, (limited to ten gallons of fuel per shift); plus

(6) Necessary rental costs of temporary site offices and yard facilities used for the performance of the Work including office rentals, utility costs, furnishings, equipment, and security systems; plus

(7) Reasonable rental value of Contractor-owned, necessary plant and equipment including small tools that are both necessary because of the unusual nature of the Work and approved in advance by DEP and tablet computers if procured for this Work prior to receipt of tablet computers from the Project Manager, plus fuel/energy costs. Except for fuel costs for pick-up trucks which shall be reimbursed based on consumption of ten (10) gallons per shift, fuel costs shall be reimbursed based on reasonable use and actual costs or, in the absence of auditable documentation, the following fuel consumption formula per operating hour: (.035) x (HP rating) x (Fuel cost/gallon). Reasonable rental value is defined as the lower of either the monthly prorated rental rates established in "The AED Green Book, Rental

Rates and Specifications for Construction Equipment" published by PRIMEDIA (the "Green Book"), or the monthly prorated rental rates established in the "Rental Rate Blue Book for Construction Equipment" published by PRIMEDIA (the "Blue Book"). The reasonable rental value is inclusive of all operating costs except for fuel/energy consumption and equipment operator's wages/costs. For multiple shift utilization, reimbursement shall be calculated as follows: first shift shall be one hundred (100%) percent of such rental rates; second shift shall be sixty (60%) percent of the first shift rate; and third shift shall be forty (40%) percent of the first shift rate. Equipment on standby shall be reimbursed at one-third (1/3) the prorated monthly rental rate. Contractor-owned equipment includes equipment from rental companies affiliated with or controlled by the Contractor, as determined by the Commissioner. In establishing cost reimbursement for non-operating Contractor-owned equipment (scaffolding, sheeting systems, road plates, etc.), the City may restrict reimbursement to a purchase-salvage/life cycle basis if less than the computed rental costs; plus

(8) Necessary installation and dismantling of such plant and equipment, including transportation to and from the Properties, if any, provided that, in the case of non-Contractor-owned equipment rented from a third party, the cost of installation and dismantling are not allowable if such costs are included in the rental rate; plus

(9) Reasonable rental costs of non-Contractor-owned necessary plant and equipment including small tools that are both necessary because of the unusual nature of the Work and approved in advance by DEP, plus fuel/energy costs. Except for fuel costs for pick-up trucks which shall be reimbursed based on consumption of ten (10) gallons per shift, fuel costs shall be reimbursed based on reasonable use and actual costs or, in the absence of auditable documentation, the following fuel consumption formula per hour of operation: (.035) x (HP rating) x (Fuel cost/gallon). In lieu of renting, the City reserves the right to direct the purchase of non-operating equipment (scaffolding, sheeting systems, road plates, etc.), with payment on a purchase-salvage/life cycle basis, if less than the projected rental costs; plus

(10) Any insurance coverage expressly required by the City pursuant to Article 15 for the performance of the Work, the cost of which is subject to DEP's prior approval; plus

(11) Costs incurred for performance and payment bonds; plus

(12) Costs incurred for Subcontracts; plus

(13) Ten (10%) percent of the total of items in Articles 35(B)(1) through 35(B)(11) as compensation for overhead, except that no percentage for overhead will be allowed on Payroll Taxes or on the premium portion of overtime pay or on sales and personal property taxes. Overhead shall include without limitation, all costs and expenses in connection with administration, and small tools (not included in paragraphs (7) and (9) (Contractor shall be entitled to 10% for overhead included in this paragraph with no requirement for payment that it substantiate its actual overhead costs); plus

(14) Ten (10%) percent of the total of items in Articles 35(B)(1) through 35(B)(11), plus the items in Article 35(B)(13), as compensation for profit, except that no percentage for profit will be allowed on Payroll Taxes or on the premium portion of overtime pay or on sales and personal property taxes (Contractor shall be entitled to 10% for profit with no requirement for payment that it substantiate its actual profit); plus

(15) Five (5%) percent of the item in Article 35(B)(12) for profit (Contractor shall be entitled to 5% for profit on Subcontracts with no requirement for payment that it substantiate its actual profit).

(C) The City shall pay Contractor an amount not exceeding $70,000,000, as may be modified by a change order, for completed and satisfactory Work approved pursuant to a Work Order even if the City is not reimbursed by FEMA for such Work.

(D) Contractor shall not be entitled to payment for Work that is not on the Work Order or Work deemed unsatisfactory by the Project Management Team or Integrity Monitor. If Work is deemed unsatisfactory, Contractor shall correct such Work at no additional cost to the City.

(E) The Prompt Payment provisions set forth in the PPB Rules in effect on the Date of Execution of this Contract are applicable to payments made under this Contract. The provisions require payment on a proper invoice to Contractor within 30 days and the payment to Contractor of interest on payments made after 30 days except as set forth in the PPB Rules. FEMA approval is not required prior to making payment on a proper invoice.

(F) Where it is in the best interest of the City, the City may pay Contractor up to 30% of the cost of certain materials if such materials are needed immediately, in large quantities, and are in limited supply due to high demand as a result of Hurricane Sandy (e.g., boilers and fire water pumps) prior to their installation in the Properties. If such a material is not installed in a Property, Contractor shall return the material for a refund. The City shall not be responsible for

reshelving fees or similar fees exceeding 15% of the original invoice price including shipping and handling.

(G) Contractor must submit a proper invoice to receive payment.

(H) Determinations of interest due will be made in accordance with the provisions of the PPB Rules. If Contractor is paid interest, the proportionate share of that interest shall be forwarded by Contractor to its Subcontractor.

(I) Contractor shall pay each Subcontractor (including a materials supplier) not later than seven (7) Days after receipt of payment out of amounts paid to Contractor by the City for work performed by the Subcontractor or supplier under this Contract.

(J) Contractor shall include in each of its Subcontracts a provision requiring each Subcontractor to make payment to each of its lower-tier Subcontractors or suppliers for Work performed under this Contract in the same manner and within the same time period set forth above.

ARTICLE 36 INVOICE AND AUDIT

(A) 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 and the Comptroller of the City of New York, pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the Charter and Administrative Code, as well as all orders and regulations promulgated pursuant thereto.

(B) 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 and the Comptroller so that they may evaluate the reasonableness of the charges. Contractor shall make its records available to the Department and to the Comptroller as deemed necessary by the Comptroller.

(C) Contractor shall submit records to the EAO showing all time and materials charges in a format to enable the EAO to expedite audit. Such records include but are not limited to: (a) a summary of labor for each billing cycle showing employee names, trades, rates, hours, and amounts for each weekly period; (b) material analysis showing vendor, material description, and payment amount; (c) equipment analysis showing item quantity, weekly or monthly rates, rates source, payment amount, and (d) summary of labor, materials, and equipment for the entire job.

(D) All books, vouchers, records, reports, cancelled checks and any and all similar materials may be subject to periodic inspection, review and audit by the State of New York, Federal Government, and other persons duly authorized by the

City. Such audit may include the examination and review of the source and application of all funds whether from the City, the State, the Federal Government or any other source.

(E) Contractor shall not be entitled to final payment under the Contract until all of the preceding requirements have been satisfactorily met.

(F) The Department may, at its option, withhold for purposes of set-off any monies due to Contractor under this Contract up to the amount of any disallowances or questioned costs resulting from any audits of Contractor or to the amount of any overpayment to Contractor with regard to this Contract.

ARTICLE 37 SUBMISSION OF REQUESTS FOR PAYMENTS

(A) Contractor shall submit a maximum of one (1) request for payment per biweekly period (14-day period). Requests for payments in excess of one (1) per 14-day period will be returned to Contractor; such invoices will not be subject to the Prompt Payment conditions of Article 35.

(B) Contractor shall submit numbered invoices for payment. Such invoices shall set forth the services for which payment is requested, and approval thereof of the Department shall be a prerequisite to payment. All payments shall be subject to such provisions for set off as may be set forth in this Contract.

(C) Payments shall be made out of such moneys as may be reserved by the Comptroller of the City of New York for the purpose herein provided.

ARTICLE 38 FINAL PAYMENT

(A) After completion of the Work, Contractor shall submit all required certificates and documents, together with an invoice for the balance claimed to be due under the Contract. A verified statement, similar to that required in connection with applications for partial payments, shall also be submitted to the Comptroller.

(B) Verified Statement of Claims. Contractor must also submit with the final invoice a final verified statement of any and all alleged claims against the City in any way connected with or arising out of this Contract, the various items of labor included therein, and the alleged value of each such item. With reference to each such claim, the Commissioner and the Comptroller 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 this Contract. Nothing contained in this Article is intended to or shall relieve Contractor from the obligation of giving timely notice of claims pursuant to this Contract. Contractor is warned that unless such claims are completely set forth as herein required, the

Contractor, upon acceptance of the final payment, will have waived any such claims pursuant to Article 39 hereof. Acceptance of final payment does not operate as a waiver of claims arising during the Contract Term but that are unknown to the Contractor and could not have been known by the Contractor at the time of request for final payment.

(C) Preparation of Final Voucher. Upon determining the balance due hereunder other than on account of claims, the Project Manager will prepare and certify, and the Commissioner will approve, a voucher for final payment in the amount, less any and all deductions authorized to be made by the Commissioner under this Contract or by Law. Such voucher shall thereupon be filed with the Comptroller, and a copy thereof delivered to the Contractor.

(D) All prior certificates and vouchers upon which partial payments were made, being merely estimates made to enable Contractor to prosecute the Work more advantageously, shall be subject to correction in the final voucher, and the certification of the Project Manager thereon and the approval of the Commissioner thereof shall be a condition precedent to the right of Contractor to receive any money hereunder. Such final voucher shall be binding and conclusive upon Contractor.

(E) Payment pursuant to such final voucher, less any deductions authorized to be made by the Comptroller under this Contract or by Law, shall constitute the final payment.

ARTICLE 39 ACCEPTANCE OF FINAL PAYMENT

(A) The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment, 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, Contractor for anything heretofore done or furnished by Contractor or relating to or arising out of this Contract and the work done hereunder, 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 a claim not otherwise waived, which is contained in the verified statement filed with Contractor's final invoice and excepting a claim not known to the Contractor at the time of final payment that could not have been known by the Contractor at such time.

(B) Contractor is warned that the execution by it of a release, in connection with the acceptance of the final payment, containing language purporting to reserve claims other than those herein specifically excepted from the final invoice or by the Comptroller from the final payment as certified by the Project Manager and approved by the Commissioner, shall not be effective to reserve such

claims, anything stated to Contractor orally or in writing by any officer, agent or employee of the City to the contrary notwithstanding.

(C) Should Contractor refuse to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.

(D) Contractor, however, shall not be barred from commencing an action for breach of contract under this provision, provided that a detailed and verified statement of claim is served upon the Department 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.

(E) City Not Estopped. Neither the City, nor any department, officer or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given by any officer, inspector, employee, agent or appointee of the City, or under any provision of this Contract, from sharing at any time, either before or after the complete performance or acceptance of the performance of this Contract and the last payment hereunder, the actual nature of the services performed by Contractor, or any person under this Contract; or from showing at any time that any certificate upon which the payment is made for any or all of the services is untrue or incorrect, or improperly made in any particular, or that the services or any part thereof performed by Contractor do not conform to this Contract. The City shall have the right to demand and recover from Contractor such damages as it may suffer by reason of Contractor's failure to comply with this Contract, notwithstanding any return as certificate and payment in accordance therewith signed by any official of the City. Such right of the City shall include recovery for any payment made for any or all of the services performed and accepted.

CHAPTER X
CONTRACTOR'S DEFAULT/TERMINATION

ARTICLE 40 COMMISSIONER'S RIGHT TO DECLARE CONTRACTOR IN DEFAULT

(A) In addition to those instances specifically referred to in other Articles herein, the Commissioner shall have the right to declare Contractor in default of the whole or any part of the Work if:

(1) Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if

(2) Contractor refuses to proceed with the Work when and as directed by the Commissioner; or if

(3) Contractor fails to comply with any directives issued by the Commissioner, Project Management Team, or Project Manager; or if

(4) Contractor sublets, assigns, transfers, conveys or otherwise disposes of this Contract other than as herein specified; or if

(5) Contractor fails to secure and maintain all required insurance; or if

(6) A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if

(7) The Commissioner is of the opinion that Contractor is or has been unnecessarily, unreasonably or willfully delaying the performance and completion of the Work, the award of necessary subcontracts or the placing of necessary material and equipment orders; or if

(8) The Commissioner is of the opinion that Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if

(9) The Commissioner is of the opinion that Contractor is or has not been executing the Contract in good faith and in accordance with its terms; or if

(10) Any statement or representation of Contractor in the Contract or in any document submitted by Contractor with respect to the Work, the project, or the Contract (or for purposes of securing the Contract) is untrue or incorrect when made; or if

(11) Contractor or any of its officers, directors, partners, five percent (5%) shareholders or greater, principals or any other person substantially involved in its contracting activities commits any of the acts or omissions specified as the grounds for debarment in the PPB Rules.

(C) Before the Commissioner shall exercise his/her right to declare Contractor in default, the Commissioner shall give Contractor an opportunity to be heard, upon not less than two (2) Days' notice.

ARTICLE 41 <u>EXERCISE OF THE RIGHT TO DECLARE DEFAULT</u>

(A) The right to declare Contractor in default for any of the grounds specified or referred to in Article 40 hereof shall be exercised by sending Contractor a notice, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared.

(B) The Commissioner's determination that Contractor is in default shall be conclusive, final, and binding on the parties and such a finding shall preclude Contractor from commencing a plenary action for any damages relating to the Contract. If Contractor protests the determination of the Commissioner, 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 42 PARTIAL DEFAULT

(A) If the Commissioner declares Contractor in default as to a part of the Work only, Contractor shall discontinue such part, but shall continue performing the remainder of the Work in strict conformity with the terms of the Contract, and shall in no way hinder or interfere with any other contractors or persons whom the Commissioner may engage to complete the Work to which Contractor was declared in default.

(B) The provision of this Chapter relating to declaring Contractor in default as to the entire Work shall be equally applicable to the declaration of partial default.

ARTICLE 43 TERMINATION

(A) The City shall have the right to terminate this Contract, in whole or in part, for cause or without cause. The City shall give no less than 30 days written notice of termination ("Termination Notice") for termination without cause and no less than five (5) days notice for termination for cause unless a shorter time is determined by the Commissioner to be necessary. If the City terminates this Contract the City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in the Termination Notice. The City shall pay for services rendered or goods delivered in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between Contractor and its landlord.

(B) Upon the establishment by the City of an alternative payment and pricing structure, as set forth in Article 35, Contractor may terminate the Contract

within 72 hours of the City's notification to Contractor of the alternative payment and pricing structure.

(C) Contractor shall be entitled to apply to the City to have this Contract terminated by the City by reason of any failure in the performance of this Contract (including any failure by the prosecution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include but are not limited to: acts of God or the public enemy; acts of the government in either its sovereign or contractual capacity; fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or any other cause beyond the reasonable control of Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of Contractor shall be made by the Commissioner, who agrees to exercise reasonable judgment therein.

(D) If such a determination is made and the Contract is terminated by the City pursuant to such application by Contractor, such termination shall be deemed to be without cause.

(E) The City may deduct or set off against any sums due and payable pursuant to this Article 41, any claims it may have against Contractor.

(F) All payments pursuant to this Article shall be accepted by Contractor in full satisfaction of all claims against the City arising out of termination.

(G) Upon termination of this Contract, Contractor shall comply with the Department or City close-out procedures, including but not limited to:

(1) Accounting for and refunding to the Department, within thirty (30) days, any unexpended funds which have been paid to Contractor pursuant to this Contract.

(2) Furnishing to the Department, within thirty (30) days, an inventory of all equipment, appurtenances and property purchased through or provided under this Contract, and carrying out any Department directive concerning the disposition thereof.

(3) Not incurring any further obligations pursuant to this Contract.

(4) Turning over to the Department all books, records, documents and material specifically relating to this Contract.

(5) Submitting, within ninety (90) days, a final statement and report relating to this Contract. This report shall be made by a certified public accountant or a licensed public accountant.

(H) In the event the City shall terminate this Contract as provided in this Article 44, then the C may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated hereby.

(I) Notwithstanding any other provisions of this Contract, Contractor shall not be relieved of liability to the City for damages sustained by the City for which Contractor could be held liable under the terms of this Contract, and the City may withhold payments to Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from Contractor is determined.

(J) The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Contract.

ARTICLE 44 COMPLETION OF THE WORK AFTER CONTRACTOR'S DEFAULT

In the event of a default of Contractor's obligations under this Contract, the Commissioner, after declaring Contractor in default, may have the services under the Contract completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in 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 promptly paid by Contractor upon demand by the City. The excess 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, may be charged against and deducted out of monies earned by the Contractor.

ARTICLE 45 PERFORMANCE OF UNCOMPLETED WORK

In completing the whole or any part of the Work under the provisions of this Chapter, 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 or modifying the NYC RRP Work Order Form to reflect problems encountered on Properties. 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 44 hereof, 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 Contractor hereunder but for its default.

ARTICLE 46 OTHER REMEDIES

(A) The rights and remedies of the City provided in this Contract shall not be exclusive and are in addition to any and all other rights and remedies provided by Law or under this Contract.

(B) 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.

CHAPTER XI
CLAIMS

ARTICLE 47 CLAIMS OR ACTIONS THEREON: NOTICE AND INFORMATION

(A) No action at law or proceeding in equity against the City or Department shall lie or be maintained upon any claim based upon this Contract or arising out of this Contract or in any way connected with this Contract unless Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(B) No action at law or proceeding in equity shall lie or be maintain against the Department or the City upon any claim based upon this Contract or arising out of this Contract unless such action shall be commenced within six (6) months after the date of final payment hereunder or within six (6) months of accrual of the cause of action, whichever is later.

(C) In the event any claim is made or any action brought in any way relating to this Contract, Contractor shall diligently render to the Department and/or the City without additional compensation any and all assistance which the Department and/or the City may require of the Contractor.

(D) Contractor shall report to the Department in writing within three (3) working days of the initiation by or against Contractor of any legal action or proceeding in connection with or relating to this Contract.

CHAPTER XII
MISCELLANEOUS PROVISIONS

ARTICLE 48 ACTIONS OR PROCEEDINGS AT LAW OR EQUITY

(A) Any claim, which is not subject to the dispute resolution provisions of the PPB Rules, against the City for damages for breach of Contract shall not be made or asserted in any action or proceeding at Law or in equity, unless Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as hereinbefore provided.

(B) Nor shall any such action or proceeding be instituted or maintained on any such claims unless such action or proceeding be commenced within six (6) months after the date of the Final Payment pursuant to Article 38 or within six (6) months of the termination or conclusion of this Contract, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.

(C) In the event any claim is made or any action brought in any way relating to this Contract, Contractor shall diligently render to the Department and/or City, without any additional compensation, any and all assistance which the Department and/or City may require of the Contractor.

(D) Contractor shall report to the Department, in writing, within three (3) working days of the initiation by or against Contractor of any legal action or proceeding in connection with or relating to this Contract.

ARTICLE 49 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

(A) In consideration of, and to induce the award of this Contract to the Contractor, Contractor represents and warrants:

(1) That it is financially solvent, and sufficiently experienced and competent to perform the Work;

(2) That the facts stated in its response to the City's Request for Expressions of Interest for the RRP are true and correct in all respects;

(3) That is has read and complies with all the requirements in the Request for Expressions of Interest for the RRP and this Contract; and

(4) That no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation;

(5) That no payment, gift or thing of value has been made, given or promised to obtain this or any other contract between the parties;

(6) No member of the City Council, or other officer, employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this Contract or in the supplies, materials, equipment, work or labor to which it relates or in any of the profits thereof;

(7) Contractor is not in arrears to the City of New York upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligations to the City of New York, and has not been declared not responsible, or disqualified by any agency of the City of New York or the State of New York, nor is there any proceeding pending relating to the responsibility or qualification of this Contractor to receive public contracts; and

(8) Contractor is duly licensed to do business in the City of New York and the State of New York and the Bidder currently holds or agrees to obtain all necessary permits and other authorization required by law or regulation for performance of this Contract.

(B) Contractor makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution hereof.

(C) For a breach of violation of such representations or warranties, Commissioner shall have the right to annul this Contract without liability entitling the City the recover all moneys paid hereunder and Contractor shall not make claim for, or the entitled to recover, any sum or sums, due under this Contract. This remedy, effected, shall not constitute the sole remedy afforded the City the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to make any other action provided for by law or pursuant to this Contract.

(D) Contractor makes no representations and warranties concerning mold abatement.

(E) Conflict of Interest. Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor

shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Contractor further represents and warrants that in the performance of this Contract, no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or part, from the City Treasury, shall participate in any decision relating to this Contract which affects his/her personal interest or the interest, of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Contract or in the proceeds thereof.

(F) Fair Practices. Contractor and each person signing on behalf of Contractor represents and warrants and certifies, under penalty of perjury, that the best of its knowledge and belief:

(1) The prices in this Contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating such prices with any other bidder or with any competitor.

(2) Unless otherwise required by law, the prices which have been quoted in this Contract and on the proposal submitted by Contractor have not been knowingly disclosed by Contractor prior to the proposal opening, directly or indirectly, to any other bidder or any competitor, and

(3) No attempt has been made or will be made by Contractor to include any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. The fact that Contractor (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to others customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

ARTICLE 50 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 Contractor or the City.

ARTICLE 51 NO CLAIMS AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

ARTICLE 52 SERVICE OF NOTICES

(A) Contractor hereby designates the business address specified on page one of this Contract as the place where all notices, direction or other communications to Contractor may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to aforesaid place, or deposit of such Notice in a post-office box regularly maintained by the United States Post Office Department, shall be conclusively deemed to be sufficient service thereof upon the Contractor. The date of such delivery or deposit shall be deemed to be the date of service.

(B) Such address may be changed at any time by an instrument in writing executed and acknowledged by Contractor and delivered to the Commissioner.

(C) Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon Contractor personally, or if Contractor be a corporation, upon any officer or director thereof.

(D) Any notice to the Department shall be in writing, and sent by first class mail or personally delivered to the Agency Chief Contracting Officer, NYC Environmental Protection, 59-17 Junction Boulevard, 17th Floor, Flushing, N.Y. 11373. Notices given pursuant to this Article 52 shall be deemed effective on the day after personal delivery or three (3) days after mailing.

(E) Notices relating to Assessments, the NYC RRP Work Order Form, and Work Orders may be sent by email.

ARTICLE 53 UNLAWFUL PROVISIONS DEEMED STRICKEN FROM THE CONTRACT

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.

ARTICLE 54 ALL LEGAL PROVISIONS DEEMED INCLUDED

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 55 CONFIDENTIALITY

(A) 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, Contractor under this Agreement. 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. 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 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 Paragraph B of this Article, 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 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 Contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

(B) Contractor shall provide notice to the Department within three (3) days of the discovery by Contractor of any breach of security, as defined in Admin Code § 10-501(b), of any data, encrypted or otherwise, in use by 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 Contractor or its employees, Subcontractors, or agents. Upon the discovery of such security breach, 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 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, Contractor shall pay directly for the costs, detailed above, if any.

(C) Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. 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.

(D) Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Contractor, 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. Contractor 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, Contractor shall return to the Department any and all confidential information in the possession of Contractor or its Subcontractors or destroy such confidential information. If Contractor or its Subcontractors are legally required to retain any confidential information, 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. Contractor shall confer with the Department, in good faith, regarding any issues that arise from Contractor retaining such confidential information.

(F) 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 INVESTIGATION CLAUSE

(A) The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or

City of New York (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 or her statement and any information from such statement will not be used against him or 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, the Port Authority of New York and New Jersey, 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 or 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, any political subdivision thereof or any local development corporation within the City, then

(D) The Commissioner or Agency Head whose Agency is a party in interest to the transaction, 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 shall attach for the failure of a person to testify.

(E) If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to A 54(G) below without the City incurring any penalty of damages for delay or otherwise.

(F) The penalties which may attach after a final determination by the Commissioner or Agency Head 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, transacting business with or entering into or obtaining any contract, lease, permit or license with or from 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 this Contract, nor the proceeds of which have been 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.

(G) The Commissioner or Agency Head shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in subparagraphs 54(G)(1) and 54(G)(2) below. He/she may also consider, if relevant and appropriate, the criteria established in Subparagraphs 54(G)(3) and 54(G)(4) below, 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 Paragraph 54(G) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph 54(D) above, gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present

evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

(H) Definitions:

(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.

(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 partner, director, officer, principal or employee.

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

(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.

(I) In addition to and notwithstanding any other provision of this Contract, the Commissioner or Agency Head may, in his/her sole discretion, terminate this Contract upon not less than three (3) days' written notice in the event Contractor fails to promptly report in writing, to the Commissioner of Investigation of the City of New York, 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 non-City party or parties, or affecting the performance of this Contract.

ARTICLE 57 COVENANTS OF CONTRACTOR

(A) Employees. All experts or consultants or employees of Contractor who are employed by Contractor to perform work under this Contract are neither employees of the City nor under contract to the City and Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Contract. Nothing in this Contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of Contractor or any person, firm, company, agency, association, corporation or organization engaged by Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, worker's compensation, disability benefit and social security, or except as specifically stated in this Contract to any person, firm or corporation.

(B) Independent Contractor Status. Contractor and the Department agree that Contractor is an independent contractor, and not an employee of the Department or the City, and that in accordance with such status as independent contractor, Contractor agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency or unit thereof, by reason thereof and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer of or employee of the City including, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

(C) Employment Practices. Contractor and its Subcontractors shall comply with the Civil Rights Act of 1964 and any amendments thereto, and the rules and regulations thereunder, and Executive Order No. 50.

(D) Political Activity.

(1) There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

(2) No funds provided under this Contract shall be used, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress of the United States, except in presentation to the Congress itself.

(3) No funds provided under this Contract shall be used to pay the salary or expenses of any person to engage in any activity designed to influence legislation or appropriations pending before the Congress of the United States.

ARTICLE 58 CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

(A) The Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York.

(B) The parties agree that any and all claims asserted by the City or against the City by Contractor arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York

City ("Federal Courts") or 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, Contractor agrees:

(1) If the City initiates any action against Contractor in Federal Court or in New York State Court, service of process may be made on Contractor either in person, wherever such Contractor may be found, or by Registered Mail addressed to Contractor at its address as set forth in this Contract, or to such other addresses as Contractor may provide to the City in writing; and

(2) With respect to any action between the City and Contractor in New York State Court, Contractor hereby expressly waives and relinquishes any rights it might otherwise have to (a) move to dismiss on grounds of *forum non conveniens,* (b) remove to Federal Court; and (c) move for a change of venue to a New York State Court outside New York County.

(3) With respect to any action between the City and Contractor in Federal Court located in New York City, 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.

(4) If Contractor commences any action against the City in a court located outside of the City and State of New York, upon request of the City, Contractor shall either consent to a transfer of the action to a 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, Contractor shall consent to dismiss such action without prejudice and may thereafter reinstate the action in a court of competent jurisdiction in the City.

(C) In the event that a third party asserts a claim against the Contractor arising under this Contract or in relation thereto in other than a Federal Court or New York State Court, as defined above, then Contractor may seek to assert a claim against the City related to such claim in such other court; provided, however, that Contractor must make a good faith effort to have such third-party claim removed to a Federal Court or New York State Court.

(D) 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 59 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

(A) Contractor agrees that neither 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.

(B) Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of Contractor or a substantially-owned affiliated company thereof, participated in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or regulations promulgated thereunder, the Comptroller may, at his/her option, render forfeit and void this Contract.

(C) Contractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

ARTICLE 60 PUBLISHED WORK

If Contractor publishes any work dealing with any aspect of performance under this Contract, or the results or accomplishments attained in such performance, the Department shall have a royalty-free, non-excusive and irrevocable license to reproduce, publish or otherwise authorize others to use the publication.

ARTICLE 61 ASSIGNMENT OF ANTITRUST CLAIMS

Contractor hereby assigns, sells and transfers to the City of New York 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 62 LOCAL LAWS 30 AND 33 of 2012

(A) In accordance with Local Laws 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the Admin Code, respectively,

(1) 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 (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

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

(3) Contractor shall post a notice provided by the City (attached hereto as Appendix F) in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

1. 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

2. the rights and remedies afforded to its employees under New York City 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.

(4) For the purposes of this Article, "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.

(5) This Article is applicable to all of Contractor's Subcontractors having subcontracts with a value in excess of $100,000; accordingly,

Contractor shall include this Article 5.2 in all subcontracts with a value a value in excess of $100,000.

(B) Paragraphs (1), (2), (4) and (5) above are not applicable to this Contract if it was solicited pursuant to a finding of an emergency.

ARTICLE 63 CLEAN AIR ACT AND ENERGY POLICY

(A) For any contract or subcontract the value of which is in excess of $100,000: Contractor shall comply and shall cause its Subcontractor to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. §1857(h)), Section 508 of the Clean Water Act (33 U.S.C. §1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

(B) Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

ARTICLE 64 NO DISCRIMINATION

As required by New York State Labor Law section 220-e or 239, as amended, Contractor agrees:

(A) That in the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(B) That neither Contractor, Subcontractor, nor any person on his/her/its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, creed, color, national origin, age, sex or disability;

(C) That there may be deducted from the amount payable to Contractor by the City under this Contract a penalty of fifty dollars ($50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and

(D) That this Contract may be canceled or terminated by the City and monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Article 64.

(E) As provided by Labor Law section 220-e, the aforesaid provisions of this Article covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

(F) Contractor specifically agrees, as required by Section 6-108 of the Administrative Code, as amended, that:

(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.

(2) It shall be unlawful for any person or any servant, agent or employee of Contractor, Subcontractor, or any person on its behalf, 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.

(3) Breach of the foregoing provisions shall be deemed a violation of a material provision of this Contract.

(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 Article 64(F) 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.

(G) 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, Contractor agrees that it:

(1) Will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, 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

(2) Will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation; and

(3) Will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, citizens status, disability, marital status, sexual orientation, or that it is an equal employment opportunity employer; and

(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

(5) Will furnish, before the award of the Contract, all information and reports, including an employment report, that are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City 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.

(H) 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:

(1) Disapproval of the Contractor; and/or

(2) Suspension or termination of the Contract; and/or

(3) Declaring Contractor in default; and/or

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

In addition to any actions taken under this Contract, failure to comply with E.O. 50 and the rules and regulations promulgated thereunder, in one or more

instances, may result in a City Agency declaring Contractor to be non-responsible in future procurements.

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.

(I) Contractor specifically agrees, as required by Section 6-123 of the Administrative Code, that:

(1) Contractor will not engage in any unlawful discriminatory practice in violation of Title 8 of the Administrative Code;

(2) Every agreement between Contractor and a first-level Subcontractor in excess of fifty thousand ($50,000) dollars shall include a provision that the Subcontractor shall not engage in any unlawful discriminatory practice as defined in Title 8 of the Administrative Code (Section 8-101 et seq.); and

(3) Any failure to comply with this Article 64(I) may subject Contractor to the remedies set forth in Section 6-123 of the Administrative Code, including, where appropriate, sanctions such as withholding of payment, imposition of an employment program, finding Contractor to be in default, cancellation of the Contract, or any other sanction or remedy provided by Law or Contract.

(J) Contractor shall comply, and shall cause its Subcontractors to comply with Executive Order 11246 of September 24, 1964, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and supplemented in Department of Labor regulations (41 CFR Chapter 60).

ARTICLE 65 DAMAGES

In addition to any other rights and remedies provided by Law and by this Contract, the Commissioner may deduct from any monies which may be due or become due under this Contract the amount of any damages sustained by the City arising out of the breach of the terms of this Contract by reason of negligence or errors of omission or commission in performance of this Contract and for which Contractor may be liable under the terms of this Contract.

ARTICLE 66 PROPERTY OF THE CITY OF NEW YORK

All notes, drawings, reports, tracings, designs, estimates and specifications and all other data required under this Contract prepared and furnished by Contractor shall become the property of the City upon their approval in writing by the Commissioner and acceptance by the City as hereinabove provided, or upon the termination of Contractor's services. Contractor shall deliver to the Commissioner all notes, maps, surveys, designs, sketches, reports, drawings, estimates and specifications which thereafter the City may utilize in whole or in part or in times as it may deem advisable without further employment of or additional compensation to Contractor.

ARTICLE 67 PROHIBITION OF TROPICAL HARDWOODS

Tropical hardwoods, as defined in Section 167-b of the New York State Finance Law shall not be utilized in the performance of this Contract, except as expressly permitted by Section 167-b of the New York State Finance Law.

ARTICLE 68 EXECUTORY CONTRACT

This Contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Contract, and no liability on account thereof shall be incurred by the purchaser beyond the amount of such monies. It is understood that neither this Contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Contract.

ARTICLE 69 ENTIRE CONTRACT – MERGER CLAUSE

This written Contract including any attachments or references which have been incorporated 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. This Contract may be modified by the parties in writing only in a manner not materially affecting the substance hereof. This Contract supersedes the Term Sheet entered into by the parties on November 20, 2012.

ARTICLE 70 [Intentionally Omitted]

ARTICLE 71 [Intentionally Omitted]

ARTICLE 72 INTELLECTUAL PROPERTY

(A) Pursuant to 44 CFR §13.34, if the services under this Contract are supported by a federal grant of funds FEMA reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes: (1) the copyright in any work

developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a grantee, subgrantee, or contractor purchases ownership with grant support.

(B) Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Contract, shall upon their creation become the exclusive property of the City. The 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 exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," 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. Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials.

(C) Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Contract. If the services under this Contract are supported by a federal grant of funds, Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

ARTICLE 73 COPELAND ANTI-KICKBACK ACT

Contractor shall comply, and shall cause its Subcontractors to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

ARTICLE 74 INSPECTION AT PROPERTIES

The Department shall have the right to have representatives of the Department or of the City or of the State or Federal governments present on any of the Properties to observe the work being performed.

ARTICLE 75 NO ESTOPPEL

(A) 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 or any other officer, agent or employee of the City, either before or after the final completion and acceptance of 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 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/or

(2) From demanding and recovering from Contractor any overpayments made to it, or such damages as it may sustain by reason of Contractor's failure to perform each and every part of this Contract in strict accordance with its terms or both.

ARTICLE 76 ELECTRONIC FUNDS TRANSFER

(A) In accordance with Section 6-107.1 of the New York City Administrative Code, Contractor agrees to accept payments under this Contract from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Contract, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by Contractor shall constitute full satisfaction by the City for the amount of the payment under this Contract. The account information supplied by Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

(B) The Commissioner may waive the application of the requirements herein to payments on contracts entered into pursuant to section 315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and Contractor have executed this Contract in quadruplicate, two (2) parts of which are to remain with the Commissioner, one (1) part to be filed with the Comptroller of the City, and one (1) part to be delivered to the Contractor.

THE CITY OF NEW YORK

BY: _____
Commissioner or Designee
Department of Environmental Protection

_____
Conti of New York LLC

BY: _____
Signature of Partner or
Officer of Corporation

(Corporate Seal) ATTEST:

_____
Secretary or Assistant Secretary

Approved As To Form

Certified as To Legal Authority

_____
Acting Corporation Counsel

Dated: _____, 20__

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and Contractor have executed this Contract in quadruplicate, two (2) parts of which are to remain with the Commissioner, one (1) part to be filed with the Comptroller of the City, and one (1) part to be delivered to the Contractor.

THE CITY OF NEW YORK

BY: _____
Commissioner or Designee
Department of Environmental Protection

William H. Picken
_____
Conti of New York LLC

BY: William H. Picken, C.O.O.
_____
Signature of Partner or
Officer of Corporation

(Corporate Seal) ATTEST:

_____
Secretary or Assistant Secretary

Approved As To Form

Certified as To Legal Authority

_____
Acting Corporation Counsel

Dated: _____, 20__

ACKNOWLEDGMENT BY COMMISSIONER OR DESIGNEE

State of New York County of Queens ss:

On this 7 day of January, 2015 before me personally came Mary Parzan, to me known and known to me to be the ACCO of the Department 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.

ALISON K. GILGORE
Notary Public, State of New York
No. 02GI6124110
Qualified in New York County
Commisison Expires March 21, 2013

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL—IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____ day of _____, 20__, before me personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL—IF A CORPORATION

State of _____ County of _____ ss:

On this _____ day of _____, 20__, before me personally appeared _____ to me known, who being by me duly sworn did depose and say that he/she resides at _____ _____, that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that one of the seals affixed to the said instrument is such corporate seal; that it was affixed by order of the directors of said corporation; and that he/she signed his/her name thereto by like order.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL—IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, 20__, before me personally appeared _____ to me known and known to me to be a member of the firm of _____, the firm described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for the act and deed of said firm.

_____
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL—IF A ~~CORPORATION~~ LLC

State of New Jersey County of Hunterdon ss:

On this 14th day of December, 2012, before me personally appeared William H. Picken to me known, who being by me duly sworn did depose and say that he/she resides at 1727 CATHEDRAL CT. Toms River, NJ 08755, that he/she is the COO of Conti of New York, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that one of the seals affixed to the said instrument is such corporate seal; that it was affixed by order of the directors of said corporation; and that he/she signed his/her name thereto by like order.

MARY ANN CALAMARI
NOTARY PUBLIC OF NEW JERSEY
ID # 2083377
My Commission Expires Dec. 22, 2015

Mary Ann Calamari
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT OF PRINCIPAL—IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____, 20__, before me personally appeared _____ to me known and known to me to be a member of the firm of _____, the firm described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for the act and deed of said firm.

_____
Notary Public or Commissioner of Deeds

AUTHORITY

MAYOR'S CERTIFICATE NO. CBX _____ DATED ___/___/___
BUDGET DIRECTOR'S CERTIFICATE NO. _____ 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, amounting to: _____

_____

Dollars, ($_____) is chargeable to the fund of the Department of Environmental Protection Code:

_____

_____

_____

I hereby certify that the specifications contained herein comply with the terms and conditions of the _____ BUDGET.

_____
Commissioner of the Department of Environmental Protection or Designee

COMPTROLLER'S CERTIFICATE

The City of New York _____, 20__.

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

_____
Comptroller

ATTACHMENTS

APPENDIX A: Environmental Health & Safety Requirements
APPENDIX B: Rapid Repairs Legal Right of Entry Form
APPENDIX C: NYC RRP Work Order Form
APPENDIX D: Broker's Certificate
APPENDIX E: Prevailing Wage Schedules
APPENDIX F: Local Law 30-12 Notice
APPENDIX G: Iran Divestiture Act Notice and Compliance Rider

Direct Deposit/Electronic Funds Transfer (EFT) Vendor Payment Enrollment Form

APPENDIX A: ENVIRONMENTAL HEALTH & SAFETY REQUIREMENTS

APPENDIX A
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. "EHS Representative" is an employee of the Contractor primarily responsible for managing the Contractor's EHS responsibilities in accordance with this Specification.

C. "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.

D. "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.

E. "Subcontractor" shall mean a subcontractor directly contracted with the Contractor or anyone other than the RRP 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 RRP 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. RRP 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 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, Contractor shall provide an EHS Representative for each geographical region where they are assigned work. The EHS Representative must 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 Project Manager.

F. The Contractor shall make available, a Competent Person for each work location. Competent Persons shall be responsible for ensuring Site Specific Safe Work Plans (SSSWPs) 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 RRP 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 RRP liable for any losses associated with the stop work order.

I. The Contractor shall prepare a SSSWP for each work location. The SSSWP shall contain a hazard analysis, identify the individuals performing the work, the individual preparing the SSSWP, emergency procedures and emergency contact information.

J. The SSSWP shall be revised whenever work conditions change and expose individuals to previously unidentified hazards.

K. The SSSWP shall be reviewed with individuals performing the work prior to the start of work and any time the SSSWP is revised.

L. The SSSWP shall be maintained in the work location and made available to all employees working at the work location.

M. The Contractors SSSWP program shall be made available to RRP 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:

1. Hazards of the work location
2. Incident and emergency reporting and response procedures
3. Contractor specific EHS requirements
4. SSSWP procedures
5. EHS Representative and Competent Person contact information

O. This orientation shall be documented for each employee assigned to an RRP work location and submitted to RRP 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 made available to RRP 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 REPORTS

A. The Contractor shall immediately report to the Project 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 RRP Incident Reporting Protocol. The Contractor shall investigate these incidents and, RRPdocument on the RRP Incident Report Form. Incident investigation reports shall be submitted to RRP EHS staff within 72 hours unless a time extension has been granted.

B. The Contractor must notify RRP staff and the 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.

2.02 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.

2.03 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 SSSWP and the RRP 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. RRP 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, NOVs, or identification of patterns of noncompliant conditions and acts.

5. Notify the Project Manager and NYC Rapid Repairs immediately of all inspections by regulatory agencies, and submit to the Project Manager and NYC Rapid Repairs 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

APPENDIX B: NYC RAPID REPAIRS LEGAL RIGHT OF ENTRY FORM; RIGHT OF ENTRY PERMIT; RIGHT OF ENTRY PERMIT REQUEST FOR CANCELLATION; STATEMENT OF LIMITATIONS

NYC Rapid Repairs
The City of New York

What am I signing?

There are 3 different forms that you must sign in order to receive repairs from NYC Rapid Repairs.

1. Right of Entry Form

This form gives NYC Rapid Repairs (government employees and contractors) the legal right to:

- Enter your home and property to inspect for damages, and
- If you choose to continue participation, make repairs that are covered under the NYC Rapid Repairs program.

NYC Rapid Repairs teams cannot inspect or make repairs unless you sign the Right of Entry form. The form is required by FEMA.

Okay, but this form is three pages! What is the fine print?

You must read the form carefully. However, some of the items in the form include (but are not limited to):

- ALL inspections and repairs done by the NYC Rapid Repairs teams are at NO COST to you, the homeowner.
- This form is valid for 90 days unless cancelled by the homeowner (see page 3 of the form). If you decide after the teams inspect your home that you do not want to have them make any repairs, you should sign this page.
- You are waiving any claims, and indemnifying the Federal, State, and City government and their contractors against any loss, damage, or destruction to the home or items in the home, or injury or death to people on the property, due to work under this program.
- The Contractor may share any information it collects with other parties – such as government agencies and Contractors – in order to inspect and repair your home. The City and the Contractor will not share this information with parties outside the NYC Rapid Repairs program.

2. Statement of Work Limitations

Federal guidelines limit the types of repairs that can be made under the NYC Rapid Repairs program. The program is intended to make limited repairs to allow you to live in your home with safe power, heat, and hot water. Your home may require additional repairs that are not covered by this program and by signing this document, you understand these limitations.

Visit NYC.gov, call 311, or visit a Restoration Center for more information.

NYC Rapid Repairs
The City of New York

3. Work Order

After the contractor inspects your home for damages, they will review the list of repairs to your home that are covered under the NYC Rapid Repairs program. You should review every item on this work order. The contractor can help explain these items to you.

If you would like to have the NYC Rapid Repairs contractors make these repairs, you must sign this form. The contractor will not make any repairs that are not listed on the form.

If you do not want the NYC Rapid Repairs contractors to make these repairs, do not sign this form. You must also sign the cancellation of the Right of Entry Form (page 3 of that form).

* * *

REMEMBER, these forms only authorize people with an official NYC Rapid Repairs ID to enter your home and make repairs. If someone comes to your home and you are not sure if they are part of NYC Rapid Repairs, call 311.

NYC Restoration Center Locations

Bronx

Locust Point
St Francis de Chantal
190 Hollywood Avenue
Between Harding Avenue and
Silver Beach Place

Brooklyn

Gravesend
SSA Building
10 Bouck Court

Red Hook
Coffey Park
85 Richards Street

Queens

Arverne
Shorefront B and C
68-20 Rockaway Beach Blvd

Breezy Point
Fort Tilden Building
415 State Road

Far Rockaway
10-01 Beach 20th Street

Staten Island

Dongan Hills
Manfredi Auto Dealership
1976 Hylan Boulevard

Visit NYC.gov, call 311, or visit a Restoration Center for more information.

NYC Rapid Repairs
The City of New York

STATEMENT OF WORK LIMITATIONS

The Undersigned acknowledges the following regarding the work to be performed under the Sheltering and Temporary Essential Power(STEP) program, as authorized by the Right of Entry(ROE):

1. I understand that the purpose of the repairs is to provide emergency protective measures related to the provision of heat, electric power, and hot water. Some immediate protective measures to home exteriors, doors, and windows will be made to prevent further weather damage. The specific repairs to be made will be set forth in a work order and no other work will be performed.

2. If necessary, the Rapid Repairs team will remove soaked flooring and wall coverings up to one foot above the point to which the water rose in the premises so that the Rapid Repairs team may work.

3. If necessary, the Rapid Repairs team will clean floors, and spray disinfect the floor and exposed walls where material was removed so that the Rapid Repairs team may work.

4. The Rapid Repairs team will NOT replace damaged flooring or wall coverings removed from the home nor make any other finishing improvements to the interior of the home.

5. The Rapid Repairs team will NOT remove any flood-damaged, fire-rated walls, or systems which are required by fire code. Removal of these walls or systems is the responsibility of the homeowner.

6. The Rapid Repairs team will NOT perform mold abatement in the home.

7. It is the responsibility of the homeowner to make sure all other systems, which are not repaired in the execution of the Rapid Repairs Program Work Order, are safe to allow occupancy.

_____
Owner's signature

_____

_____
Address

_____
Date

Please use ballpoint or roller ball pens and print clearly

For FEMA/State/local/Tribal\ Use Only:
ROE No.: _____ Age of Structure: _____
GPS Location: Long: _____ Lat: _____
Remarks: _____

RIGHT-OF-ENTRY PERMIT

Owner Name		
Insurance Company; Policy No. & Claim No.		
Owner's FEMA Individual Assistance Registration Number		
Street Address		
City/Town/Burough		
County/Parish		
Phone	**Primary**	**Alternate**

The undersigned, ("Owner"), hereby unconditionally authorizes the City/Borough/County in which the above property is located (City/Borough/County), the State in which the above property is located (State), tribal governments, the United States of America including the Federal Emergency Management Agency (FEMA) , and participating Voluntary Organizations Active in Disaster (VOAD), and their respective assigns, employees, agents, and contractors (collectively, with FEMA, the "Assistance Providers") to have the right of access and to enter in and onto the property described above for the purpose of performing inspections and/or emergency protective measures resulting from Hurricane Sandy at no expense to Owner for purposes of participating in the Sheltering and Temporary Essential Power (STEP) Assistance Program.

It is fully understood that this Right of Entry Permit (ROE) does not create any obligation on the part of the Assistance Providers to perform inspections or undertake emergency protective measures to the Property. Owner understands that no emergency protective measures will be performed until this ROE is completed in full.

1. Time Period: The ROE shall expire 90 days after this form is signed, unless sooner cancelled according to the terms herein.

2. Inspection/Emergency Protective Measures Authorized: The ROE authorizes inspection, and emergency protective measures to the Property. Owner understands that the Government, its employees, agents, contractors and/or representatives shall, in their sole discretion, determine the extent of the required emergency protective measures. If Owner disagrees with the nature or extent of proposed actions, Owner may refuse any additional work and cancel this ROE at any time.

3. Disclosures: By signing this ROE, Owner acknowledges that none, some, or all of the following work may be performed pursuant to this ROE and FEMA policy. Owner further acknowledges that work may involve the use of raw, unfinished materials to provide only emergency protective measures.

1) Repairs to storm-damaged electrical meters (consisting of the weather head, service cable, meter socket, and meter box) necessary for a utility to re-energize the residence;
2) Measures necessary to provide essential electrical supply, heat, and hot water;
3) Disconnecting damaged portions of the residential electrical system not essential to restoring electrical supply to the meter and into the residential unit;
4) Securing broken windows, covering damaged exterior walls and roofs, and patching or otherwise securing damaged exterior doors; and/or
5) Inspections necessary to complete the aforementioned work.

4. Local, State, Federal, and Tribal Governments and VOADS Held Harmless: The Owner acknowledges that the Government's decisions on whether, when, where, and how to provide disaster relief to Owner's property are discretionary functions. Owner recognizes that 42 USC § 5148 states: "The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter." Additionally, the undersigned will indemnify and hold harmless the Assistance Providers for any and all liability, loss, damage, or destruction of any type whatsoever to the above described property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the property, and hereby releases, discharges and waives any and all liability, claims, demands, damages, injuries, losses, penalties, fines, costs, causes of action, judgments, expenses, as well as any and all actions, either legal or equitable, which the undersigned has, or that might arise, of any nature whatsoever and by whomever made, or may have, by reason of or incident to any action of aforesaid Assistance Providers taken to accomplish the aforementioned purpose.

5. Miscellaneous:

a. Owner represents and warrants that Owner has full power and authority to execute and fully perform Owner's obligations under this ROE. If Owner is an entity, Owner also represents and warrants that Owner has such power and authority pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this ROE on behalf of Owner are the duly designated agents of Owner and are authorized to do so. Owner expressly represents and warrants that fee title to the Premises is vested solely in Owner.

b. This ROE includes the right of ingress and egress on other lands of the Owner not described above, provided such ingress and egress is necessary and not otherwise conveniently available to the Assistance Providers. All tools, equipment, and other property taken upon or placed upon the property by the Assistance Providers shall remain the property of the Assistance Providers and may be removed by the Assistance Providers at any time within a reasonable period after the expiration of this ROE, if necessary.

c. Owner understands that any individual who fraudulently or willfully misstates any fact in connection with this ROE shall be subject to a fine as provided under 18 U.S.C. § 1001 or imprisoned for not more than five years or both.

Privacy Act Statement:

a. Legal Authority: 10 U.S.C. § 3013; The Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, 42 U.S.C. §§ 5121-5207; 4 U.S.C. §§ 2904 and 2906; 4 C.F.R. § 206.2(a)(27).

b. Information Sharing: Information is collected to make it possible for the Government, its employees, agents, contractors and/or representatives to enter your property, inspect for damage, and/or undertake emergency protective measures. Information submitted will be shared with other government agencies, Federal and nonfederal, their contractors, subcontractors and employees, as well as with voluntary agencies performing inspections and/or emergency protective, for official use only in accordance with the purposes stated in this ROE.

c. Whether Disclosure is Mandatory or Voluntary: Disclosure is voluntary; however, failure to disclose the information will make it impossible for us to inspect your property, or undertake emergency protective measures may delay or prevent the individual from provision of disaster services and/or assistance.

Signature(s) and Witness

For the considerations and purposes set forth herein, I/we hereby set my/our hand(s) and seal(s) this _____ day of _____, 2012.

_____
Owner Signature Date

_____
Co-Owner Signature (if applicable) Date

_____
Phone Number

_____
Phone Number

_____
Owner's FEMA Registration Number (if applicable)

_____
WITNESS

RIGHT-OF-ENTRY PERMIT -REQUEST FOR CANCELLATION

To cancel a previously-granted Right of Entry (ROE) permit, this cancellation form must be signed by the Owner, and delivered to the Federal Emergency Management Agency (FEMA) at a Disaster Recovery Center, by **FAX** to FEMA's National Processing Service Center at 1-800-827-8112,. Allow at least three (3) days to process. ***Alternatively, the ROE may be cancelled at the Property site by obtaining the signature of the authorized representative present when the crew appears for work.*** It is recommended that the Owner make a copy of the signed cancellation prior to giving this form to the authorized representative. The authorized representative will keep the original signed copy for its records. Reproduction capability may not be available at the ROE collection points. Phone-in and verbal cancellations will not be accepted.

By canceling the ROE, Owner acknowledges that inspections and emergency protective measures may not be performed by the County/Parish/Borough, the City / County, the State/Tribe, the United States of America including FEMA and the Corps of Engineers, or participating Voluntary Organizations Active in Disaster (VOAD), and their respective assigns, employees, agents, and contractors.

I have read and understand the foregoing statement concerning cancellation policies. I hereby certify that I request to cancel the foregoing ROE and my request for disaster-related emergency protective measures.

Signature: _____ _____
Owner Date Time

Printed Name: _____ Address: _____

_____

I hereby acknowledge receipt of the foregoing request for cancellation:

Signature: _____ _____
Authorized Representative Date Time

Printed Name: _____ Title: _____
(Indicate authorized organization and title)

APPENDIX C: NYC Rapid Repairs Program Work Order Form

NYC RAPID REPAIR WORK ORDER

1. WORK ORDER NO.	2. REGISTRANT ID

3. APPLICANT/SITE INFORMATION	4. CONTRACT WORK ORDER INFORMATION	
NAME (Last, First, Middle Initial)	CONTRACTOR	INSPECTOR
SITE ADDRESS (House No. and Street Name, Apt/Unit No.)		

CITY AND STATE	BOROUGH	5. Building Type	6. FEMA NO.	7. PW NO.

7. REPAIR

ITEM NO	WORK ITEM	UNIT	ASSESSED QUANTITIES	INITIAL VERIFICATION	ACTUAL QUANTITIES	FINAL VERIFICATION (as applicable)	COMMENTS
A	**INTERIOR**						
A.1	Debris Removal	SQ FT					
A.2	Flooring	SQ FT					
A.3	Walls	SQ FT					
A.4	Ceilings	SQ FT					
A.5	Clean and Disinfect	SQ FT					
A.6							
B	**INTERIOR-ELECTRICAL**						
B.1	Panel	EA					
B.2	Outlets	EA					
B.3	Power (Boiler/Furnace/Water Heater)	EA					
B.4	Fixtures	EA					
B.5							
C	**INTERIOR-PLUMBING**						
C.1	Furnace (BTU) Natural Gas	EA					
C.2	Furnace (BTU) Oil	EA					
C.3	Hot Water Tank	EA					
C.4							
D	**EXTERIOR**						
D.1	Roofing Patch	SQ FT					
D.2	Siding Patch	SQ FT					
D.3	Window Patch	EA					
D.4	Doors (1" Plywood)	SQ FT					
D.5	Stair Repair	#TREADS					
D.6	ADA Ramp	SQ FT					
D.7							
E	**EXTERIOR-ELECTRICAL**						
E.1	Mast	Y/N					

E.2	Weather Head	Y/N					
E.3	Meter Pan	Y/N					
E.4	Wire	LI FT					
E.5		EA					
ADD-ONS							

8. PLAN/DIRECTIONS/COMMENTS: (If more space is needed, use blank sheet and attach)

9. CERTIFICATION AND SIGNATURES – The above described work has been completed, inspected and complies with contract specifications.

SIGNATURE OF MONITOR	DATE	SIGNATURE OF CONTRACTOR	DATE

APPENDIX D: Insurance Requirements (Schedule A) and Broker's Certification

SCHEDULE A
TYPES OF INSURANCE, MINIMUM LIMITS AND SPECIAL CONDITIONS

Note: All certificate(s) of insurance submitted pursuant to Article 15(C)(2) must be accompanied by a Certification of Broker consistent with the form at the end of this Schedule A 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).**

All such certificate(s) of insurance (including Certification(s) of Broker, where required) must be sent to the New York City Department of Environmental Protection, Agency Chief Contracting Officer, ATTN: Contract Management Office (INSURANCE), 17th Floor, 59-17 Junction Boulevard, Corona, New York 11368.

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

Types of Insurance (per Article 15 in its entirety, including listed paragraph)	**Minimum Limits and Special Conditions**
■ Commercial General Liability Art. 15(A)(1)	$5,000,000 per occurrence $10,000,000 aggregate, per Project. Additional Insureds: 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

■ Workers' Compensation Art. 15(A)(2) ■ Disability Benefits Insurance Art. 15(A)(2) ■ Employers' Liability Art. 15(A)(2) ☐ Jones Act Art. 15(A)(3) ☐ U.S. Longshoremen's and Harbor Workers Compensation Act Art. 15(A)(3)	Workers' Compensation, Employers' Liability, and Disability Benefits Insurance: Statutory per New York State law without regard to jurisdiction. **Note**: New York State Workers' Compensation Board form no. C-105.2, State Insurance Fund form no. U-26.3, and Request for WC/DB Exemption form no. CE-200 are acceptable. The City will not accept an ACORD form as proof of Workers' Compensation Insurance. Jones Act and U.S. Longshoremen's and Harbor Workers' Compensation Act: Statutory per U.S. law.
■ Commercial Auto Liability Art. 15(A)(4)	$1,000,000 per accident combined single limit If vehicles are used for transporting hazardous materials, Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90
■ Contractors Pollution Liability Art. 15(A)(5)	$2,000,000 per occurrence $5,000,000 aggregate per Project Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____

☐ Marine Protection and Indemnity Art. 15(A)(6)(a)	$_____ per occurrence $_____ aggregate Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
☐ Hull and Machinery Insurance Art. 15(A)(6)(b)	$_____ per occurrence $_____ aggregate Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
☐ Marine Pollution Liability Art. 15(A)(6)(c)	$_____ each occurrence Additional Insureds: 1. City of New York, including its officials and employees, and 2. _____ 3. _____
☐ Professional Liability Insurance Art. 15(A)(7)	$_____ per occurrence/claim $_____ aggregate
☐ Personal Property Insurance Art. 15(A)(8)	$_____ per occurrence $_____ aggregate

BROKER'S CERTIFICATION

Pursuant to Article 15(C)(2) of the Contract, every Certificate of Insurance evidencing Commercial General Liability Insurance, Commercial Automobile Insurance, and Contractors' Pollution Liability 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 _____

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance, dated 12/20/2012, concerning insurance policy number TB2-631-509639-022 AS2-631-509639-012 BE 19700182 COPS 16470161 is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

Construction Risk Partners

[Name of broker (typewritten)]

2150 Route 28, Suite 201, Branchburg, NJ 08876

[Address of broker (typewritten)]

[Signature of authorized official or broker]

Peter Forenza

[Name and title of authorized official (typewritten)]

Sworn to before me this
20th day of December, ~~2009~~ 2012

NOTARY PUBLIC

DARLENE J. BEST
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 16, 2016

APPENDIX E: Prevailing Wage Schedules

NYC Rapid Repair Program

Overtime and Shift Work Modifications to Work performed on or after December 15, 2012

ELECTRICIAN

Electrician "A" Rate

Overtime
Time and one half the regular rate after an **8** hour day.
Time and one half the regular rate for Saturday.
Time and one half the regular rate for Sunday.

PLUMBER

Plumber

Overtime
Time and one half the regular rate after an **8** hour day.
Time and one half the regular time rate for Saturday.
Time and one half the regular rate for Sunday.

STEAMFITTER

Steamfitter I

Overtime
Time and one half the regular rate after an **8** hour day.
Time and one half the regular time rate for Saturday.
Time and one half the regular rate for Sunday.

Shift Rates
30% shift premium for wages and fringe benefits for 4:00PM and midnight shifts Monday to Friday. 50% shift premium shall be paid for wages and fringes benefits for 4:00PM and midnight shift work performed on weekends. For shift work on holidays, double time wages and fringe benefits shall be paid.

Rapid Repair Program
Labor Rates applicable to Work performed on or after December 15, 2012

SHEET METAL WORKER

Overtime
Time and one half the regular rate after an **8** hour day.
Time and one half the regular time rate for Saturday.
Time and one half the regular rate for Sunday.

Shift Rates
30% shift premium for wages and fringe benefits for 4:00PM and midnight shifts Monday to Friday. 50% shift premium shall be paid for wages and fringes benefits for 4:00PM and midnight shift work performed on weekends. For shift work on holidays, double time wages and fringe benefits shall be paid.

APPENDIX F: Local Law No. 30-12 Notice (Whistleblower Protection Expansion Act Notice)

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

All communications are confidential.

APPENDIX G: Iran Divestment Act Notice and Compliance Rider

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[*Please Check One*]

BIDDER'S CERTIFICATION

☐ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

☐ I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated:

_____
SIGNATURE

_____
PRINTED NAME

_____
TITLE

State of .....)
) ss:
County of .....)

Subscribed and sworn or affirmed to before me this _____ day of _____ 20_____

by _____.

Notary Public State of _____

BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[*Please Check One*]

BIDDER'S CERTIFICATION

☒ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

☐ I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated:

William H Picken
SIGNATURE

William H-Picken
PRINTED NAME

Chief Operating Officer
TITLE

State of New Jersey)
) ss:
County of Hunterdon)

Subscribed and sworn or affirmed to before me this 14th day of December 2012
by Mary Ann Calamari.

Notary Public State of

MARY ANN CALAMARI
NOTARY PUBLIC OF NEW JERSEY
ID # 2083377
My Commission Expires Dec. 22, 2015

Direct Deposit/Electronic Funds Transfer (EFT) Vendor Payment Enrollment Form

CITY OF NEW YORK • DEPARTMENT OF FINANCE • TREASURY DIVISION

NYC Finance

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

Mail to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or **Fax to:** EFT at 212-361-7063.

INSTRUCTIONS: Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. **Note: Your application cannot be processed without this documentation.** See the reverse side for more information and instructions.

SECTION I - VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)

2. VENDOR NAME (AS IT APPEARS ON W-9 FORM):

3. VENDOR'S ADDRESS (FOR EFT ENROLLMENT PURPOSES):

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON NAME:

CONTACT PERSON TELEPHONE NUMBER:

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:

2. ACCOUNT NAME:

3. BANK NAME :

4. BANK BRANCH ADDRESS:

5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)

6. ACCOUNT TYPE - MUST BE EITHER CHECKING OR SAVINGS: (CHECK ONE BOX ONLY)

☐ CHECKING ☐ SAVINGS

7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:

TELEPHONE NUMBER:

SECTION III - VENDOR SIGNATURE

VENDOR SIGNATURE

PRINT NAME

DATE

CITY OF NEW YORK • DEPARTMENT OF FINANCE • TREASURY DIVISION

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or Fax to: EFT at 212-361-7063.

SECTION I - VENDOR INFORMATION

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person.)

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account. Account must be designated as either checking or savings. (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

SECTION III - VENDOR SIGNATURE

Sign and date where indicated.