FIRST AMENDMENT

This First Amendment ("**Amendment**" or "**First Amendment**"), made and entered into this 3rd day of August, 2015, by and between the City of New York (the "**City**") acting by and through the Commissioner of the Department of Design and Construction (the "**Commissioner**") and Tishman Construction Corporation of New York (the "**Contractor**"), located at 100 Park Avenue, New York, NY 10017. The City and the Contractor may collectively be referred to as the "**Parties**."

WITNESSETH:

WHEREAS, the City and the Contractor entered into an Agreement bearing Comptroller's Registration Number 20151424706 for design, construction, and construction management services for Hurricane Sandy Residential Community Recovery (the "**Agreement**" or "**Contract**"); and

WHEREAS, the City and the Contractor desire to amend the Agreement as set forth in this First Amendment; and

WHEREAS, the Agreement provided that the Parties shall establish an "Insurance Program" prior to the commencement of construction services, as set forth in the Contract and this First Amendment; and

WHEREAS, the Parties have established such Insurance Program, as memorialized below; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties hereto agree as follows:

§ 1. Except as modified herein or modified previously, all of the covenants, terms and conditions of the Agreement, including but not limited to the indemnification provision in Article 15.4 of the Contract, shall remain unchanged, and are hereby ratified and confirmed as in full force and effect.

§ 2. The Agreement is amended to add a new Article 1.19.5 as follows:

1.19.5 "Insurance Program" means the insurance described in Article 23.1.2.

2015-038251

§ 3. The Agreement is amended to add a new Article 7.2.1 as follows:

With respect to any Work Order issued by the Commissioner pursuant to the Agreement, the individual Homeowner will be required to execute the Right of Entry Permit and Waiver, which is annexed as Attachment 1 to this First Amendment. No Work may be provided or required by the Contractor or its Subcontractors on a Home until the Right of Entry Permit and Waiver has been executed for that Home.

§ 4. Article 9.3.9(c) of the Agreement is amended as follows:

(c) Insurance.

(i) Subcontracts executed prior to the effective date of the Insurance Program.

Subcontracts with Consultants executed prior to the effective date of the Insurance Program shall require that the Consultant carry the following types and amounts of insurance: (1) commercial general liability insurance with coverage at least as broad as ISO Form CG 0001, occurrence (rather than claims-based) in the minimum amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate, with the City of New York and the Homeowner named as additional insureds thereunder with coverage at least as broad as ISO Form CG 20 26; (2) workers compensation insurance, disability benefits insurance, and employer's liability insurance, as required by New York State Law; and (3) professional liability insurance, as set forth in Article 23.1.1(a)(ii). All policies shall be in compliance with the requirements of Article 23, except as otherwise provided, and shall be issued by companies that meet the criteria set forth in such article. Proof of Insurance shall be provided to DDC in accordance with Article 23.1.1(c).

(ii) Subcontracts executed on or after the effective date of the Insurance Program.

(A) All Subcontracts with Consultants executed or amended on or after the effective date of the Insurance Program shall provide that the Consultant shall maintain (1) Commercial General Liability Insurance with coverage at least as broad as the most recently issued Insurance Services Office (ISO) Form CG 0001, occurrence (rather than claims-based) in the minimum amount of $1,000,000 per occurrence (combined single limit), $2,000,000 aggregate, with the City of New York and the Homeowner named as additional insureds thereunder with coverage at least as broad as ISO Form CG 20 26; (2) the insurance described in Articles 23.1.1(a)(ii) and (iii), despite their designation as "interim" insurance requirements; and (3) if vehicles

are used in the provision of services, the insurance required by Article 23.1.2(a)(v). All policies must meet the requirements of this Article 23 and proof of insurance shall be provided to DDC in accordance with Article 23.1.1(c). Consultant's obligation to maintain the coverages and policies of insurance described above and in Article 23.1.1 shall not be affected by the provisions of subsection (B), below.

(B) In addition, Subcontracts with Consultants that are executed or amended on or after the effective date of the Insurance Program may provide that the Consultant, subject to the written consent of the Commissioner, (1) is covered by the insurance described in Articles 23.1.2(a)(i), (ii), and/or (iv), while performing Work; and (2) shall comply with all requirements applicable to the Insurance Program as described in Article 23.1.2 and in the attachments hereto. This sub-section (B) shall apply only to first-tier Consultants. Subconsultants shall not be enrolled in the Insurance Program and shall be required to independently maintain the insurance coverages and policies referred to in this Article 9 and in Article 23.1.1, below.

§ 5. Article 10.2.3(e) of the Agreement is amended as follows:

(e) Insurance.

(i) Subcontracts executed prior to the effective date of the Insurance Program.

(A) Subcontracts (excluding those contracts between the Contractor and a Consultant) executed prior to the effective date of the Insurance Program shall require the Subcontractor to maintain the insurance required pursuant to Articles 23.1.1(a)(i), 23.1.1(a)(iii), and 23.1.1(a)(v). Upon the effective date of the Insurance Program, the Contractor shall amend all such Subcontracts to provide the Subcontractor (1) is covered by the insurance provided for in Articles 23.1.2(a)(i), (ii) and (iv); (2) shall maintain the insurance required by Article 23.1.2(a)(v); and (3) shall comply with all requirements applicable to the Insurance Program, unless an exception is approved in writing by the Commissioner.

(B) If an exception to the requirement in Article 10.2.3(e)(i)(A) is approved in writing by the Commissioner, a Subcontract executed prior to the effective date of the Insurance Program shall provide that the Subcontractor shall maintain the insurance set forth in the Commissioner's written approval.

(ii) Subcontracts executed on or after the effective date of the Insurance Program.

(A) Unless an exception is approved in writing by the Commissioner, all Subcontracts (excluding those contracts between the Contractor and a Consultant) executed or amended on or after the effective date of the Insurance Program shall provide that the Subcontractor (1) is covered by the insurance provided for in Articles 23.1.2(a)(i), (ii) and (iv) while performing Work; (2) shall maintain the insurance required by Article 23.1.2(a)(v); and (3) shall comply with all requirements applicable to the Insurance Program.

(B) If an exception to the requirement in Article 10.2.3(e)(ii)(A) is approved in writing by the Commissioner, a Subcontract executed on or after the effective date of the Insurance Program shall provide that the Subcontractor shall maintain the insurance set forth in the Commissioner's written approval.

§ 6. Article 23 of the Agreement is amended in its entirety as follows:

ARTICLE 23 - INSURANCE

23.1 Interim Insurance Requirements and Insurance Program: The Contractor shall maintain the insurance set forth below.

23.1.1 Interim Insurance Requirements. From date the Contractor is ordered to commence Work until the effective date of the Insurance Program as defined in this Article 23, the Contractor shall maintain the insurance set forth in this Article 23.1.1.

23.1.1(a) Types and Amounts of Insurance.

(i) Commercial General Liability Insurance: The Contractor shall provide a Commercial General Liability Insurance policy (with the coverages indicated below) in the minimum amount of $2,000,000 per occurrence (combined single limit), $5,000,000 aggregate. The Contractor shall provide Commercial General Liability Insurance covering claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Agreement. 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); construction means and methods; and incidental malpractice. Such insurance shall contain a "per project" aggregate limit, as stated above, that applies separately to operations under this Agreement. Such Commercial General Liability Insurance shall name the City and the Homeowner 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 2010 and completed operations coverage at least as broad as the latest edition of ISO Form CG 20 37. The Commercial General Liability Insurance policy provided shall include the following endorsements:

(A) The City of New York, including its officials and employees, and the Homeowner are Additional Insureds under this policy.

(B) Notice under the Policy to the Additional Insured shall be addressed to the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York, New York 11101 and to the Homeowner at the address provided by the City.

(C) Notice of Accident shall be given to the insurance company by the Insured within one hundred twenty (120) calendar days after notice of such accident has been sent to the Commissioner and the Homeowner.

(D) Notice of Claim shall be given to the insurance company within one hundred twenty (120) calendar days after such notice shall be filed with the Comptroller of the City of New York.

(E) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand, or other writing on behalf of the City and Homeowner as Additional Insureds. Any response by the insurance company to such notice, demand or other writing shall be addressed to Named Insured, to the Homeowner at the address provided by the City, and to the City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007.

(F) Notice of Cancellation of Policy, as set forth in Article 23.2.5 below.

(ii) Professional Liability Insurance: Any Consultant engaged by the Contractor to perform professional services hereunder, and any subconsultant performing professional services, must provide Professional Liability insurance in the amount of at least One Million Dollars ($1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the consultant or anyone employed by the consultant.

(A) Claims-made policies will be accepted for Professional Liability Insurance.

(B) All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Consultant or subconsulant shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy

is secured with a retroactive date, including at least the last policy year.

(iii) Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance: The Contractor shall provide, and shall cause its Subcontractors to 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.

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

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

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

(v) Commercial Automobile Liability Insurance: The Contractor shall provide liability insurance in the amount of $1,000,000 per occurrence (combined single limit) covering all owned, non-owned and hired vehicles to be used in connection with this Agreement. Such policy shall name the City of New York as an additional insured thereunder. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

23.1.1(b) General Requirements for Insurance Coverage and Policies for the Interim Insurance Requirements:

(i) All required insurance policies shall be maintained with companies that may lawfully

issue the required policy and have an A.M. Best rating of at least A-/VII or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Corporation Counsel.

(ii) The Contractor and its Subcontractors, 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.

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

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

(v) The Contractor may satisfy its insurance obligations under this Article 23.1.1 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(vi) Policies of insurance provided pursuant to this Article 23.1.1 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(vii) Wherever this Article 23.1.1 requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

23.1.1(c) Proof of Insurance:

(i) For all types of insurance required by Article 23.1.1 except for Builders Risk insurance, if required, the Contractor shall file proof of insurance in accordance with this Article 23.1.1 within ten (10) Days of award. For Builders Risk, proof shall be filed by a date specified by the Commissioner or ten (10) Days prior to the commencement of the portion of the Work covered by such policy, whichever is earlier.

(ii) For Workers' Compensation Insurance provided pursuant to Article 23.1.3, the Contractor shall submit one of the following forms: C-105.2 Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. For Disability Benefits Insurance provided pursuant to Article 23.1.3, the Contractor shall submit

DB-120.1 - Certificate Of Insurance Coverage Under The NYS Disability Benefits Law, Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. ACORD forms are not acceptable.

(iii)For policies provided pursuant to all of Article 23.1.1 other than Builder's Risk, the Contractor shall submit one or more Certificates of Insurance on forms acceptable to the Commissioner. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to Article 23.1.1(a) that the City and the Homeowner are Additional Insureds with coverage at least as broad as the most recent edition of ISO Forms CG 20 10, CG 20 37, and CG 20 26, as applicable; (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number); and (d) the number assigned to the Agreement by the City. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" or, if the certification is provided after July 27, 2015, "Certification by Insurance Broker or Agent" in the form attached to this Agreement or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(iv)Documentation confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Agreement. Such proofs of insurance shall comply with the requirements of Articles 23.1.1(c)(ii) and 23.1.1(c)(iii).

23.1.1(d) <u>Operations of the Contractor</u>

(i) The Contractor shall not commence the Work unless and until all required certificates have been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of a certificate does not excuse the Contractor from securing insurance consistent with all provisions of this Article 23 or of any liability arising from its failure to do so.

(ii) Contractor may not utilize a self-insurance program to satisfy the requirements of this Article 23. The Contractor shall ensure that any insurance program provides the City with the risk transfer benefits of commercial insurance with approved insurance companies. Such insurance programs are required to have cost-effective provisions that include, but not limited to loss-sensitive rating plans, deductibles/retained losses with a claims payment fund required by insurers and managed by third party claims administrators approved by the insurers, risk management and safety programs and full accounting of claims.

23.1.1(e) Subcontractor Insurance. To the extent this Agreement requires a Subcontractor to maintain insurance, proof of such insurance shall be provided to the City in accordance with Article 23.1.1(c), reflecting the coverages and policies described in Article 23.1.1(a), and the Contractor shall ensure that the Subcontractor name the City, including its officials and employees, as an Additional Insured on its Commercial General Liability policy with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

23.1.2 The Insurance Program. From the effective date of the Insurance Program until the date specified in the written approval of the Commissioner that sets forth the terms of the Insurance Program in an attachment (the "Insurance Program Approval"), the Contractor shall maintain insurance as provided in Article 23.1.2. The Insurance Program Approval is attached hereto as Attachment 2 and incorporated by reference into this Amendment.

23.1.2(a) Types of Insurance.

(i) Contractor Controlled Insurance Program: The Contractor shall provide a Contractor Controlled Insurance Program, hereinafter referred to as the CCIP, that includes Commercial General Liability Insurance, Worker's Compensation and Employers' Liability Insurance, and Excess Liability Insurance. The CCIP shall be subject to prior written approval of the Commissioner and set forth in the Insurance Program Approval.

(ii) Builders Risk Insurance: The Contractor shall provide Builders Risk Insurance providing coverage for all Homes that are the subject of the Agreement. The terms and conditions of this Builders Risk Insurance shall be subject to prior written approval of the Commissioner and set forth in the Insurance Program Approval.

(iii) Professional Liability Insurance: The Contractor shall provide Professional Liability Insurance for professional services rendered pursuant to the Agreement. The terms and conditions of this Professional Liability Insurance shall be subject to prior written approval of the Commissioner and set forth in the Insurance Program Approval.

(iv) Contractors Pollution Legal Liability Insurance: The Contractor shall provide Contractors Pollution Legal Liability Insurance covering services rendered pursuant to the Agreement. The terms and conditions of this Contractors Pollution Legal Liability Insurance shall be subject to prior written approval of the Commissioner shall be subject to prior written approval of the Commissioner and set forth in the Insurance Program Approval.

(v) Commercial Automobile Liability Insurance: The Contractor shall provide liability insurance in the amount of $1,000,000 per occurrence (combined single limit) covering all owned, non-owned and hired vehicles to be used in connection with this Agreement. Such policy shall name the City of New York as an additional insured thereunder. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened

coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90. The Contractor shall cause each Subcontractor that uses vehicles in the provision of services for this Agreement to independently maintain the Commercial Automobile Liability insurance required by this Article 23.1.2(a)(v).

23.1.2(b) Subcontractor Insurance.

(i) The insurance required by Article 23.1.2(a)(i), (ii), and (iv) shall cover Subcontractors (excluding Consultants, except those approved by the Commissioner pursuant to Art. 9.3.9(c)(ii)(B), above), and their subcontractors at all tiers (excluding subconsultants) as Additional Insureds while performing Work, except as approved in writing by the Commissioner.

(ii) The insurance required by Article 23.1.2(a)(i), (ii), and (iv) may cover first-tier Consultants while performing Work, subject to the written consent of the Commissioner, however such insurance shall not extend coverage to subconsultants of any tier or level, except as approved in writing by the Commissioner.

(iii) To the extent this Agreement requires a Subcontractor to maintain insurance, proof of such insurance shall be provided to the City in accordance with Article 23.1.1(c) and the Contractor shall ensure that the Subcontractor name the City, including its officials and employees, as an Additional Insured on its Commercial General Liability policy with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

23.2 General Requirements applicable to both the Interim Insurance Requirements and Insurance Program:

23.2.1 Policies of insurance provided pursuant to this Article 23 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

23.2.2 The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Article 23 upon the demand for such policy by the Commissioner or the City Corporation Counsel. The Contractor shall provide the City with copies of all policies provided under the Insurance Program as soon as they are available.

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

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

revocation, suspension or termination is due to causes outside of Contractor's reasonable control. The Commissioner may also declare the Contractor in default for failure to maintain the required insurance, unless such lapse, revocation, suspension or termination is due to causes outside of Contractor's reasonable control.

23.2.5 In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 23 shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall use its best efforts to ensure that there is no interruption in any of the insurance coverage required under this Article 23.

23.2.6 Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article 23, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to the Contractor's own employees) as soon as is practicable. For any policy where the City and/or Homeowner are Additional Insured(s) such notice shall expressly specify that "this notice is being given on behalf of the City of New York and Homeowner as Additional Insureds as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the first named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and to the Homeowner.

23.2.7 In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 23, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

23.2.8 Wherever reference is made in Article 15 or this Article 23 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to 30-30 Thomson Avenue, Long Island City, NY 11101.

23.2.9 Waiver of Right of Subrogation: The Contractor waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article 23 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its employees, agents, or Subcontractors.

23.2.10 Materiality/Non-Waiver: The Contractor's failure to secure policies in complete conformity with this Article 23, or to give an insurance company timely notice of any sort required in this Agreement or to do anything else required by this Article 23 shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any

action or inaction by the City at any time.

23.2.11 Pursuant to General Municipal Law Section 108, this Agreement shall be void and of no effect unless Contractor maintains Workers' Compensation Insurance for the term of this Agreement to the extent required and in compliance with the New York State Workers' Compensation Law.

23.2.12 Other Remedies: Insurance coverage provided pursuant to this Article 23 or otherwise shall not relieve the Contractor of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Agreement or Law.

§ 7. Article 26 of the Agreement is amended in its entirety as follows:

ARTICLE 26 - CONTRACT CHANGES

26.1 Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Contractors deviating from the requirements of an original purchase order or contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original Contract. The Contractor shall perform all Work, if any, ordered in a contract Modification or amendment.

26.2 Contract changes will be made only for Work necessary to complete the Work included in the original scope of the Contract, for non-material changes to the scope of the Contract, and to cover costs required by the Insurance Program. Changes are not permitted for any material alteration in the scope of the Projects. Contract changes may include any contract revision deemed necessary by the Contracting Officer. The Contractor may 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, the 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 agreement of a fixed price; (2) by unit prices specified in the contract; (3) by time and material record; and/or (4) in any other manner approved by the City Chief Procurement Officer.

26.3 Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification.

26.4 All payments for change orders are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller. If the audits reveal that the Contractor's costs for the change order Work were inaccurately stated during negotiations, the Agency shall 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 in addition to all other rights and remedies of the City.

26.5 The Parties acknowledge that the Insurance Program is a cost-effective program that is loss sensitive based on the cost of claims and other factors and, therefore, the total cost of the Insurance Program is variable as a function of the claims and associated claims administration. The parties anticipate that it will be necessary to increase the allowance in the Budget for the Insurance Program. An increase in the allowance, if any, will be documented in a budget modification pursuant to section 4-02 of the PPB Rules. It is further understood that risk management and safety programs as part of the Insurance Program are expected to help manage the cost of the claims. Any savings and reductions to the Insurance Program are expected to help manage the cost of the claims. Any savings and reductions to the insurer required claims payment fund, if any, due to reduced claims shall be returned to the City at the contract closeout process.

§ 8. Article 42.6 of the Agreement is amended to provide as follows:

42.6 Insurance Costs: The costs of the Interim Insurance Requirements and Insurance Program shall be borne as follows.

42.6.1 Cost of Interim Insurance Requirements. Pursuant to Article 23.1.1(b)(ii), above, the Contractor or its Subcontractors, as applicable, 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.

42.6.2 Cost of Insurance Program. (a) The City shall pay for the cost of the premiums, deductibles, program administration and broker fees, Contractor administration fees, claims funding obligations from retained losses required by insurers, third-party claims administration and other costs to manage and reduce claims for insurance required pursuant to Articles 23.1.2(a)(i), 23.1.2(a)(ii), 23.1.2(a)(iii), and 23.1.2(a)(iv) as set forth in the Insurance Program Approval and Exhibits thereto. In addition, the City shall pay the cost of early termination fees imposed by insurance carriers or underwriters on the Contractor as a result of the City's failure to timely pay for the above costs. "Timely" shall mean thirty (30) days after a completed payment requisition for insurance costs is received by the City from the Contractor or the due date for payment set forth in the Contractor's agreement with the insurance carrier or underwriter, whichever is later. The City's duty to pay for the aforementioned items shall survive the termination or expiration of this Agreement. The City shall pay such costs for the Insurance Program promptly upon demand by the Contractor, provided such demand is accompanied by proof that such payment is required by the Insurance Program, except in the case of Contractor administration fees, which shall be paid on a reimbursement or lump sum basis, as set forth in the Insurance Program Approval and Exhibits thereto. On invoices, the Contractor shall clearly indicate insurance-related costs in the detail required by the Department. The Contractor shall promptly provide proof of payment in a form acceptable to the Department, which shall include a copy of this Amendment, executed, and a detailed invoice as agreed upon by the parties, but shall not require the Contractor to actually advance such funds on behalf of the Department for the purchase of the Insurance Program, except in the case of Contractor administration fees. Refunds provided to the Contractor relating to the Insurance Program, if any, shall be promptly paid to the City upon receipt.

(b) For the avoidance of doubt, the City shall not be responsible for any costs not required by 42.6.2(a), including, but not limited to: (1) costs incurred for insurance that was not required pursuant to Articles 23.1.2(a)(i), 23.1.2(a)(ii), 23.1.2(a)(iii), and 23.1.2(a)(iv); (2) costs relating to the Commercial Automobile Liability Insurance required pursuant to Article 23.1.2(a)(v); and (3) costs of insurance maintained by Subcontractors and their subcontractors that are not covered by Articles 23.1.2(a)(i), 23.1.2(a)(ii), 23.1.2(a)(iii), and 23.1.2(a)(iv).

(c) Notwithstanding any provision to the contrary in this Agreement, the Contractor's invoice for the initial cost of the Insurance Program and, as approved by the Department, invoices for subsequent costs of the Insurance Program shall not count toward the limit on invoicing the City once a month.

§ 9. Article 71 of the Agreement is deleted in its entirety.

§ 10. **Effective Date**. Upon registration pursuant to Charter section 328, this Amendment shall be retroactive to the effective date of the Agreement.

[NO FURTHER TEXT.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment in triplicate, the day and year first above written, one copy to remain with the Commissioner, one copy to be filed with the Comptroller of the City of New York and one copy to be delivered to the Contractors.

THE CITY OF NEW YORK

By: _____
Commissioner
The City of New York
Department of Design and Construction

TISHMAN CONSTRUCTION CORPORATION OF NEW YORK

By: _____

Print Name: JAY BADAME

Title: PRESIDENT & COO

EIN: 13-4012826

Approved as to Form and Certified as to Legal Authority

_____
Acting Corporation Counsel

Date: AUG 13 2015

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of NEW YORK County of NEW YORK ss:

On this 6th day of August, 2015 before me personally came George Jay Badame, who being by me duly sworn, did depose and say that he/~~she~~ resides in the City of TOMS River, NJ, that he/~~she~~ is the President + CEO of Tishman Construction Corporation of New York, the corporation described in and which executed the foregoing instrument; and that he/she signed his/~~her~~ name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

Alexandra Gellman
Notary Public or Commissioner of Deeds

ALEXANDRA GELLMAN
Notary Public, State of New York
No. 02GE6212251
Qualified in New York County
Commission Expires October 13, 2017

ACKNOWLEDGMENT BY COMMISSIONER

State of New York County of Queens ss:

On this 7 day of August, 2015 before me personally came Feniosky Peña-Mora, to me known and known to me to be the Commissioner of the Department of Design and Construction of The City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Deputy Commissioner for the purposes therein mentioned.

JANENE M. PODESTA
Notary Public, State of New York
Registration #02PO6212680
Qualified in Kings County
Commission Expires October 19, 2017

Notary Public or Commissioner of Deeds