

**Contains Confidential Commercial Information**

**Consolidated Edison Company of New York, Inc. – Contract for Electric-related goods or services**

ATTACHMENT NO. 1

CONTRACTOR : SAFEWAY CONSTRUCTION ENTERPRISES  
INC

PURCHASE ORDER NO. : 4028928

BID COMPARISON:

\$6,929,047  
\$7,044,513  
\$13,243,309  
\$14,601,678  
\$14,812,994  
\$29,871,409

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4028928**

Revision **7**

PO Approved Date **10/26/2012**

Revision Date **10/26/2012**

Current Buyer **David Blaut**

Supplier: **SAFeway CONSTRUCTION ENTERPRISES INC**

**COMPASS 54-60 44TH ST**

**MASPETH, NY 11378**

**UNITED STATES**

Supplier

Contact:

**DIRE GUIDO**

**7183496645**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**8880 Immediate N/A DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)

**09/15/2012 09/14/2013 4,500,000.00**

**Notes: MANHATTAN - VAULT REPAIRS UNIT PRICE CONTRACT - 1 YEAR CONTRACT WITH OPTION FOR A 2ND YEAR**

The following documents are made part of this award:

- All documents referenced in Event # 37108: Contract Drawings and Specification and all referenced drawings, pictures and specifications
- Special Conditions dated 5/1/12 as listed in Event.
- Clarifications #1 (7/30/12), #2 (8/2/12)
- Con Edison's Standard Terms & Conditions of Construction Contracts dated 12/7/10.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/07/08
- EH&S Checklist and Requirements
- Compliance & Exception, Offer & Disclosure Forms dated 8/1/12
- Insurance on file is up to date
- The following item have been deleted from this award - TVR20, T165, T166, ,T7, T112, T92, T95

Reference Documents: STC\_Construction.pdf

GIFT POLICY.docx

AppendixA.pdf

Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf

All prices and amounts on this order are expressed in USD

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 HOUR 375.00

TRV1 - Crew hour price for general minor structure repairs inside of transformer vault.

**This line CANCELED on 18-OCT-2012**

2 EACH 12000.00

TRV2 - Complete roof alteration of a V10, V11 or a V12 transformer vault including break out of existing roof and disposal of debris.

**This line CANCELED on 18-OCT-2012**

3 SQUARE

FOOT

150.00

TRV3 - Fabricate and install buried lift out pre-cast roof slab for V10, V11 or V12 transformer vault.

**This line CANCELED on 18-OCT-2012**

4 CUBIC

YARD

1500.00

TRV4-Fabricate and install buried lift out pre-cast roof beams use 6"-14" steel beams. Steel

painted, wrapped w/2"X2" galv. welded wire mesh and encased in 2" of 5000lb. Concrete per EO-1122.

**This line CANCELED on 18-OCT-2012**

5 POUND 40.00

TRV5 - Steel I Beam – 6" to 14"

**This line CANCELED on 18-OCT-2012**

6 SQUARE

FOOT

74.25

TRV6 - Waterproof transformer vault floor and 12" up vault walls including clean up and preparation of vault, water test and installation of mortar protection coat. No existing breakout. Applicable Specifications: EO-1007, EO-100642

**This line CANCELED on 18-OCT-2012**

7 SQUARE

FOOT

37.00

TRV7 - Waterproof transformer vault floor and 24" up vault walls using Xypex concentrate or an approved similar product, including clean up and preparation of vault and water test. No protection coat. EO-1007, EO-100642

**This line CANCELED on 18-OCT-2012**

8 SQUARE

FOOT

37.00

TRV8 - Break out existing mortar protection coat of waterproofing and disposal of material.

**This line CANCELED on 18-OCT-2012**

9 SQUARE

FOOT

95.00

TRV9 - Break out delaminated concrete on wall up to and including 4" deep, Install walls forms and place concrete

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

**This line CANCELED on 18-OCT-2012**

10 POUND 4.00

TRV10 - Install # 4 & # 5 reinforcing rods. Epoxy coated. To be used when required with item # 9.

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**This line CANCELED on 18-OCT-2012**

11 EACH 12.00

TRV11 - Install # 4 & # 5 reinforcing rod dowels. Epoxy coated. To be used when required with items 9 & 10.

**This line CANCELED on 18-OCT-2012**

12 CUBIC

YARD

560.00

TRV12 - Break out reinforced concrete wall or floor and disposal of debris.

**This line CANCELED on 18-OCT-2012**

13 CUBIC

YARD

1600.00

TRV13 - Install concrete forms, install epoxy coated steel dowels and reinforcing rods and place concrete for an existing reinforced concrete wall or floor with a single reinforcing steel mat. Break out to be paid under item # 12.

**This line CANCELED on 18-OCT-2012**

14 CUBIC

YARD

1800.00

TRV14 - Install concrete forms, epoxy coated steel dowels and reinforcing rods and place concrete for an existing reinforced concrete wall or floor with a double reinforcing mat.

**This line CANCELED on 18-OCT-2012**

15 SQUARE

FOOT

20.00

TRV15 - Waterproof vaulted sidewalk and/or buss compartment roof. Applicable Specification: EO-1007.

**This line CANCELED on 18-OCT-2012**

16 EACH 500.00

TRV16 - Wire brush and paint exposed steel door frames.

**This line CANCELED on 18-OCT-2012**

17 LINEAR

FOOT

110.00

TRV17 - Break out and remove damaged steel beam fireproofing, wire brush and paint steel, wrap steel with 2" X 2" galvanized welded wire mesh, form and place 5000lb grout.

**This line CANCELED on 18-OCT-2012**

18 EACH 2600.00

TRV18 - Erect live transformer and primary and or equipment protection/platform.

**This line CANCELED on 18-OCT-2012**

19 EACH 125.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

TRV19 - Clear existing sewer piping, all pipes from the vault to city connection.

**This line CANCELED on 18-OCT-2012**

20 SQUARE

FOOT

4.00

T101 - Furnish, install and remove solid sheeting.

**This line CANCELED on 18-OCT-2012**

21 SQUARE

FOOT

9.00

T103 - Furnish and place tongue and groove pressure treated sheeting to be left in place

**This line CANCELED on 18-OCT-2012**

22 SQUARE

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FOOT

10.00

T104 - Furnish, place and remove tongue and groove pressure treated sheeting

**This line CANCELED on 18-OCT-2012**

23 EACH 2200.00

T167 - Replace sump pump piping in transformer vault.

**This line CANCELED on 18-OCT-2012**

24 CUBIC

YARD

650.00

T7R - Breakout and restoration of concrete driveways or sidewalks

**This line CANCELED on 18-OCT-2012**

25 SQUARE

FOOT

2.00

T110 - Furnish, place, secure, maintain, protect and remove steel plates

**This line CANCELED on 18-OCT-2012**

26 SQUARE

FOOT

3.00

T117 - Furnish, place, maintain, pedestrian plates

**This line CANCELED on 18-OCT-2012**

27 HOUR 25.00

T1210 - Furnish labor and equipment for dewatering

**This line CANCELED on 18-OCT-2012**

28 CUBIC

YARD

525.00

T2R - Street surface pavement with base concrete including base

**This line CANCELED on 18-OCT-2012**

29 CUBIC

YARD

300.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

T41 - Earth excavation by machine and hand, load and haul away

**This line CANCELED on 18-OCT-2012**

30 CUBIC

YARD

375.00

T42 - Earth excavation by hand only, load and haul away

**This line CANCELED on 18-OCT-2012**

31 CUBIC

YARD

38.00

T91 -Furnish and deliver Type I or II clean earth backfill

**This line CANCELED on 18-OCT-2012**

32 EACH 250.00

T211 - Same day mobilization

**This line CANCELED on 18-OCT-2012**

33 HOUR 487.50

TRV1 - Crew hour price for general minor structure repairs inside of transformer vault. WEEKEND UNIT

PRICE

**This line CANCELED on 18-OCT-2012**

34 EACH 15600.00

TRV2 - Complete roof alteration of a V10, V11 or a V12 transformer vault including break out of existing

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roof and disposal of debris. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

35 SQUARE

FOOT

195.00

TRV3 - Fabricate and install buried lift out pre-cast roof slab for V10, V11 or V12 transformer vault.

WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

36 CUBIC

YARD

1950.00

TRV4-Fab.&install buried lift out pre-cast roof beams use 6"-14" steel beams.Steel painted, wrap w/2"X2" galv. weld wire mesh&encase in 2" of 5000lb.Concrete per EO-1122.Cost of steel paid under separate item.WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

37 POUND 52.00

TRV5 - Steel I Beam – 6" to 14" WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

38 SQUARE

FOOT

96.53

TRV6 - Waterproof transformer vault floor and 12" up vault walls incl. clean up and prep. of vault, water test and install of mortar protection coat. No existing breakout. Applicable Specifications:EO-1007,

EO-100642 WEEKEND UNIT PRICE

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

**This line CANCELED on 18-OCT-2012**

39 SQUARE

FOOT

48.10

TRV7 - Waterproof transformer vault floor and 24" up vault walls using Xypex concentrate or an approved similar product, including clean up and preparation of vault and water test. No protection coat. EO-1007,

EO-100642 WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

40 SQUARE

FOOT

48.10

TRV8 - Break out existing mortar protection coat of waterproofing and disposal of material. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

41 SQUARE

FOOT

123.50

TRV9 - Break out delaminated concrete on wall up to and including 4" deep, Install walls forms and place concrete WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

42 POUND 5.20

TRV10 - Install # 4 & # 5 reinforcing rods. Epoxy coated. To be used when required with item # 9.

WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

43 EACH 15.60

TRV11 - Install # 4 & # 5 reinforcing rod dowels. Epoxy coated. To be used when required with items 9 & 10. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

44 CUBIC

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YARD

728.00

TRV12 - Break out reinforced concrete wall or floor and disposal of debris. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

45 CUBIC

YARD

2080.00

TRV13 - Install concr.forms, epoxy coated steel dowels and reinforcing rods and place concrete for an existing reinforced concrete wall or floor with a single reinforcing steel mat. Break out to be paid under item # 12. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

46 CUBIC

YARD

2340.00

TRV14 - Install concrete forms, epoxy coated steel dowels and reinforcing rods and place concrete for an existing reinforced concrete wall or floor with a double reinforcing mat. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

47 SQUARE

FOOT

26.00

TRV15 - Waterproof vaulted sidewalk and/or buss compartment roof. Applicable Specification: EO-1007.

WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

48 EACH 650.00

TRV16 - Wire brush and paint exposed steel door frames. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

49 LINEAR

FOOT

143.00

TRV17 - Break out and remove damaged steel beam fireproofing, wire brush and paint steel, wrap steel with 2" X 2" galvanized welded wire mesh, form and place 5000lb grout. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

50 EACH 3380.00

TRV18 - Erect live transformer and primary and or equipment protection/platform. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

51 EACH 162.50

TRV19 - Clear existing sewer piping, all pipes from the vault to city connection. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

52 SQUARE

FOOT

5.20

T101 - Furnish, install and remove solid sheeting. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

53 SQUARE

FOOT

11.70

T103 - Furnish and place tongue and groove pressure treated sheeting to be left in place WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

54 SQUARE

FOOT

13.00

T104 - Furnish, place and remove tongue and groove pressure treated sheeting WEEKEND UNIT PRICE

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**This line CANCELED on 18-OCT-2012**

55 EACH 2860.00

T167 - Replace sump pump piping in transformer vault. WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

56 CUBIC

YARD

845.00

T7R - Breakout and restoration of concrete driveways or sidewalks WEEKEND UNIT PRICE

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

**This line CANCELED on 18-OCT-2012**

57 SQUARE

FOOT

2.60

T110 - Furnish, place, secure, maintain, protect and remove steel plates WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

58 SQUARE

FOOT

3.90

T117 - Furnish, place, maintain, pedestrian plates WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

59 HOUR 32.50

T1210 - Furnish labor and equipment for dewatering WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

60 CUBIC

YARD

682.50

T2R - Street surface pavement with base concrete including base WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

61 CUBIC

YARD

390.00

T41 - Earth excavation by machine and hand, load and haul away WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

62 CUBIC

YARD

487.50

T42 - Earth excavation by hand only, load and haul away WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

63 CUBIC

YARD

49.40

T91 -Furnish and deliver Type I or II clean earth backfill WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

64 EACH 325.00

T211 - Same day mobilization WEEKEND UNIT PRICE

**This line CANCELED on 18-OCT-2012**

65 HOUR 442.50

TRV1 - Crew hour price for general minor structure repairs inside of transformer vault. NIGHT TIME

UNIT PRICE

**This line CANCELED on 18-OCT-2012**

66 EACH 14160.00

TRV2 - Complete roof alteration of a V10, V11 or a V12 transformer vault including break out of existing roof and disposal of debris. NIGHT TIME UNIT PRICE

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

**This line CANCELED on 18-OCT-2012**

67 SQUARE

FOOT

177.00

TRV3 - Fabricate and install buried lift out pre-cast roof slab for V10, V11 or V12 transformer vault.

NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

68 CUBIC

YARD

1770.00

TRV4-Fab.&install buried lift out pre-cast roof beams using 6"-14" steel beams.Paint Steel,wrap w/2"X2" galv. welded wire mesh&encase in 2" of 5000lb. Concrete per EO-1122. Cost of steel paid separate item.NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

69 POUND 47.20

TRV5 - Steel I Beam – 6" to 14" NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

70 SQUARE

FOOT

87.62

TRV6-Waterproof transformer vault floor & 12" up vault walls include clean up&prep. of vault, water test&install of mortar protection coat.No existing breakout.Applicable Specs:EO-1007, EO-100642.NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

71 SQUARE

FOOT

43.66

TRV7 - Waterproof transformer vault floor and 24" up vault walls using Xypex concentrate or an approved similar product, incl. clean up and preparation of vault and water test. No protection coat. EO-1007, EO-100642 NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

72 SQUARE

FOOT

43.66

TRV8 - Break out existing mortar protection coat of waterproofing and disposal of material. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

73 SQUARE

FOOT

112.10

TRV9 - Break out delaminated concrete on wall up to and including 4" deep, Install walls forms and place concrete NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

74 POUND 4.72

TRV10 - Install # 4 & # 5 reinforcing rods. Epoxy coated. To be used when required with item # 9. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

75 EACH 14.16

TRV11 - Install # 4 & # 5 reinforcing rod dowels. Epoxy coated. To be used when required with items 9 & 10. NIGHT TIME UNIT PRICE

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**This line CANCELED on 18-OCT-2012**

76 CUBIC

YARD

660.80

TRV12 - Break out reinforced concrete wall or floor and disposal of debris. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

77 CUBIC

YARD

1888.00

TRV13-Install concrete forms, install epoxy coated steel dowels and reinforcing rods and place concrete for an existing reinforced concrete wall or floor w/ a single reinforce steel mat. Break out paid under item # 12.NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

78 CUBIC

YARD

2124.00

TRV14 - Install concrete forms, epoxy coated steel dowels and reinforcing rods and place concrete for an existing reinforced concrete wall or floor with a double reinforcing mat. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

79 SQUARE

FOOT

23.60

TRV15 - Waterproof vaulted sidewalk and/or buss compartment roof. Applicable Specification: EO-1007. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

80 EACH 590.00

TRV16 - Wire brush and paint exposed steel door frames. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

81 LINEAR

FOOT

129.80

TRV17 - Break out and remove damaged steel beam fireproofing, wire brush and paint steel, wrap steel with 2" X 2" galvanized welded wire mesh, form and place 5000lb grout. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

82 EACH 3068.00

TRV18 - Erect live transformer and primary and or equipment protection/platform. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

83 EACH 147.50

TRV19 - Clear existing sewer piping, all pipes from the vault to city connection. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

84 SQUARE

FOOT

4.72

T101 - Furnish, install and remove solid sheeting. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

85 SQUARE

FOOT

10.62

T103 - Furnish and place tongue and groove pressure treated sheeting to be left in place NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

86 SQUARE

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FOOT

11.80

T104 - Furnish, place and remove tongue and groove pressure treated sheeting NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

87 EACH 2596.00

T167 - Replace sump pump piping in transformer vault. NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

88 CUBIC

YARD

767.00

T7R - Breakout and restoration of concrete driveways or sidewalks NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

89 SQUARE

FOOT

2.36

T110 - Furnish, place, secure, maintain, protect and remove steel plates NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

90 SQUARE

FOOT

3.54

T117 - Furnish, place, maintain, pedestrian plates NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

91 HOUR 29.50

T1210 - Furnish labor and equipment for dewatering NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

92 CUBIC

YARD

619.50

T2R - Street surface pavement with base concrete including base NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

93 CUBIC

YARD

354.00

T41 - Earth excavation by machine and hand, load and haul away NIGHT TIME UNIT PRICE

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

**This line CANCELED on 18-OCT-2012**

94 CUBIC

YARD

442.50

T42 - Earth excavation by hand only, load and haul away NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

95 CUBIC

YARD

44.84

T91 -Furnish and deliver Type I or II clean earth backfill NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

96 EACH 295.00

T211 - Same day mobilization NIGHT TIME UNIT PRICE

**This line CANCELED on 18-OCT-2012**

97 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

98 NS0170141 EACH 1.00

PARTIAL - PATRIALPAYMENT

99 NS0170248 EACH 1.00

PREMIUM - PREMDIFFPAYMENT

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100 NS0170249 EACH 1.00  
PROGRESS - PROGRESSPAYMENT  
101 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION  
102 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE  
103 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION  
104 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
105 NS0171406 HOUR 375.00  
TVR01 - MINORREPAIRXFRMRVLT  
106 NS0171407 EACH 12000.00  
TVR02 - ROOFALTV10,11,12  
107 NS0171408 SQUARE  
FOOT  
150.00  
TVR03 - FABINSTVAULTROOFSLAB  
108 NS0171409 LINEAR  
FOOT  
1500.00  
TVR04 - FABINSTPCROOFBEAM  
109 NS0171410 POUND 40.00  
TVR05 - STEELI-BEAM6-14IN  
110 NS0171411 SQUARE  
FOOT  
74.25  
TVR06 - WATERRPRFVLTWALL12IN  
111 NS0171412 SQUARE  
FOOT  
37.00  
TVR07 - WATERPRFVLTWALL24IN  
112 NS0171413 SQUARE  
FOOT  
37.00  
TVR08 - B/OMORTARCOATDISPOSE  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
113 NS0171414 SQUARE  
FOOT  
95.00  
TVR09 - B/OCONCFRMINSTCONC  
114 NS0171415 POUND 4.00  
TVR10 - INST45REINFRODEPOXY  
115 NS0171416 EACH 12.00  
TVR11 - INST45DOWRREPOXY  
116 NS0171417 CYLIND  
ER  
560.00  
TVR12 - B/OREINFCOBCWALLDISP  
117 NS0171418 CYLIND  
ER  
1600.00  
TVR13 - INSTCONCFRMRERODSING  
118 NS0171419 CYLIND  
ER

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1800.00  
TVR14 - INSTCONCFRMRERODDOUB  
119 NS0171420 SQUARE  
FOOT  
20.00  
TVR15 - WTRPRFVLTBUSCOMPARTM  
120 NS0171421 EACH 500.00  
TVR16 - WIREBRUSHPAINTSTEEL  
121 NS0171422 LINEAR  
FOOT  
110.00  
TVR17 - B/ODAMAGEDSTLFRPRFG  
122 NS0171423 EACH 2600.00  
TVR18 - ERECTEQPPROTECTPLTFM  
124 NS0170601 SQUARE  
FOOT  
4.00  
T101 - SOLID SHEETING  
125 NS0170603 SQUARE  
FOOT  
9.00  
T103 - TONGUE/GROVESHEETING  
126 NS0170604 SQUARE  
FOOT  
10.00  
T104 - T/GSHEETINGFURNOTHER  
127 NS0170863 EACH 2200.00  
T167 - INTERNALSEWERMATERIA  
128 NS0171344 CYLIND  
ER  
650.00  
T7R - BRKRESTSDWKDRIV  
129 NS0170609 SQUARE  
FOOT  
2.00  
T110 - VEHICULAR PLATES  
130 NS0170617 SQUARE  
FOOT  
3.00  
T117 - PEDESTRIAN PLATES  
131 NS0170975 HOUR 25.00  
T210 - DEWATERING  
132 NS0171041 CYLIND  
ER  
525.00  
T2R - STREET/BASE/BRK/REST  
133 NS0171165 CYLIND  
ER  
300.00  
T41 - EXCAMACHHAND<10FT  
134 NS0171172 CYLIND 375.00  
COMPASS BPA 4028928, 7  
Proprietary and Confidential Page 14 of 20  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
ER  
T42 - EXCA100 HAND<10FT  
135 NS0171358 CYLIND

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ER

38.00

T91 - CLEANFILL

136 NS0170979 EACH 250.00

T211 - MOBILIZATION

137 NS0187526 EACH 125.00

TVR19 CLREXISTSEWERPIPING

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor

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shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

Blanket Purchase Agreement 4028928,

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and

## Contains Confidential Commercial Information

Blanket Purchase Agreement 4028928,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

Blanket Purchase Agreement 4028928,

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to,



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O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 2

CONTRACTOR : EBERHART CONSTRUCTION CORP INC

PURCHASE ORDER NO. : 4029926

BID COMPARISON :

\$1,200,000

\$1,200,000

\$1,560,000

\$1,698,000

\$1,977,000

\$2,017,000

\$2,225,750

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COMPASS Complex Service PO  
4029926, 2

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4029926**

Revision **2**

PO Approved Date **01/18/2013**

Revision Date **01/18/2013**

Buyer **Elza Renazile**

Supplier: **EBERHART CONSTRUCTION CO INC**

**COMPASS 4 EXECUTIVE PL**

**YONKERS, NY 10701**

**UNITED STATES**

Supplier

Contact:

**MCPHILLIPS THOMAS**

**9149660200**

Key

ConEd

Contact:

**Wilfred Nunez**

**212-466-8345**

**NUNEZW@CONED.COM**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**9655 Immediate DESTINATION**

**Notes:** Demolition of existing fire pump house and the installation of new fire pump house.

The Contractor shall furnish supervision, labor, tools, materials, equipment necessary to complete the work in accordance with the requirements for the removal/installation of Dunwoodie Substation fire pump house.

All work will be performed in accordance with the following documents which are incorporated herein by reference: Con Edison's Standard Terms and Conditions of Construction Contracts dated December 07, 2010. Supplemental Construction Contract Requirements (C-CM-003R) dated June 07, 2008

Specification CE-MS-350021935-06 A dated November, 2010

Specification CE-MS-3500-21935-06 B dated June, 2011

Con Edison Special Condition dated 7/11/12

Appendix A dated July, 2007

Con Edison's Invitation to Bid Event 37113 dated 7/14/12 and all documents referenced therein.

Eberhart Construction signed Offer, Exception, Disclosure, and Compliance form dated 8/6/12. No exception taken to Terms and Conditions.

Clarification #1 dated 8/13/12

Gift Policy

Con Edison Representatives are:

Wilfredo Nunez 917-440-3692

Greg McLain 347-203-2694

COMPASS Complex Service PO

4029926, 2

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**Contains Confidential Commercial Information**

Joe Palma 917-440-3413

EH&S Rich Catero 646-772-3232

This Purchase Order will be performed in accordance with the following:

No work will begin prior to submitting a Task or Site Specific Health And Safety Plan (e-HASP) to the project manager and subsequently receiving an approval of such plan in writing from a Con Edison representative.

Reference Documents: Supplemental Construction Contract Requirements (SCCR).pdf

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

1 Needed:

04/30/2013

1 EACH 1116000.0

0

1,116,000.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 55,800.00

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

04/30/2013

1 EACH 1116000.0

0

1,116,000.00

Ship To:

Use the ship-to address at the top of page 1

Total: **1,116,000.00 (USD)**

Standard Purchase Order 4029926, 2

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that

## **Contains Confidential Commercial Information**

any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Standard Purchase Order 4029926, 2

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

## Contains Confidential Commercial Information

Appendix A.  
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### Gift Policy

Standard Purchase Order 4029926, 2

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### Terms and Condition 12-7-10

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

Standard Purchase Order 4029926, 2

Proprietary and Confidential Page 9 of 41

December 7, 2010

-

1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

Con Edison-Consolidated Edison Company of New York, Inc.

Contractor-The contractor named on the face of the Con Edison purchase order.

Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.

Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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3. Specifications, Plans, and Drawings

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The

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specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4. Price and Payment**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase.

All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Standard Purchase Order 4029926, 2

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The



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amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Standard Purchase Order 4029926, 2

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule.

Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

### 7.Safeguards in Work

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Standard Purchase Order 4029926, 2

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall

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not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### **9. Contractor's Performance**

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

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(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Standard Purchase Order 4029926, 2

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Standard Purchase Order 4029926, 2

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is

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necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### **13.Changes (Including Extra Work)**

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

#### **(a)Labor**

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(b)Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

#### **(c)Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and

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unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14. Labor**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work.

Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform

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any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### **15. Time and Material and Cost Reimbursable Work**

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Standard Purchase Order 4029926, 2

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an

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act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Standard Purchase Order 4029926, 2

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Standard Purchase Order 4029926, 2

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not



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covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such Standard Purchase Order 4029926, 2

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused,

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Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. **Vehicle Spills** Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. **Maintenance of Work Site.** Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. **Subsurface Conditions Found Different.** Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23. **Inspection and Tests and Correction of Defects**

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Standard Purchase Order 4029926, 2

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or

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nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### 25.Subcontracting

A.Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any

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of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And

Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and

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such bonds shall so provide.

31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect

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on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Standard Purchase Order 4029926, 2

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field

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and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made"

Standard Purchase Order 4029926, 2

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

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(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Standard Purchase Order 4029926, 2

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the

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policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Standard Purchase Order 4029926, 2

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Standard Purchase Order 4029926, 2

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con



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Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Standard Purchase Order 4029926, 2

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or

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becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Standard Purchase Order 4029926, 2

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum

A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 3

CONTRACTOR : MECC CONTRACTNG INC

PURCHASE ORDER NO. : 4036923

BID COMPARISON:

\$41,191,185

\$47,995,633

\$48,337,917

\$54,628,345

\$71,814,382

\$73,793,364

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Proprietary and Confidential Page 1 of 12  
**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4036923**

Revision **6**

PO Approved Date **11/07/2012**

Revision Date **11/07/2012**

Current Buyer **David Blaut**

Supplier: **MECC CONTRACTING INC**

**COMPASS 21 AUTUMN AVE**

**BROOKLYN, NY 11208**

**UNITED STATES**

Supplier

Contact:

**Moccia Luigi**

**7182350800**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**8809 Immediate N/A DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)

**09/01/2012 08/31/2015 46,700,000.00**

**Notes: QUEENS AREA TRENCHING CONTRACT**

**NO WORK CAN BEGIN WITHOUT A HASP**

**THIS IS A 3 YEAR CONTRACT - PRICING REMAINS FIRM FOR THE LENGTH OF THE CONTRACT**

**SPECIAL NOTES:**

**LABOR RATE DISCOUNT:**

**WHEN CON EDISON POSTED L&E LABOR RATES ARE USED IN QUEENS OR BROOLYN EAST AREAS, A MULTIPLIER OF 0.98 WILL APPLY AGAINST THE CON EDISON RATES.**

**THIS BPA TAKES THE PLACE OF BPA 4017959**

**MECC CONTRACTING**

**THIS BPA IS GOVERNED BY PERFECT COMMERCE BID EVENT # 36630 Dated March 8, 2012, and ALL DOCUMENTS REFERENCED THEREIN (WHICH ARE INCORPORATED HEREIN BY REFERENCE), INCLUDING, BUT NOT LIMITED, TO THE FOLLOWING:**

**The CONTRACTOR HAS TAKEN NO EXCEPTIONS.**

**- CON EDISON STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION DATED:**

**DECEMBER 7, 2010 as MODIFIED BY THE PAYMENT TERMS THAT FOLLOW.**

**-BROOKLYN QUEENS ITEM USAGE AND CONVERSIONS REV 1**

**-BROOKLYN QUEENS SPECIAL CONDITIONS MARCH 28 2012 REV 4**

**- BID PRICE SHEET REV. J, DATED APRIL 6, 2012**

**- REVISED BID PRICE SHEET DATE APRIL 26, 2012**

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**- TRENCHING MANUAL - REVISION 7, NOV. 2009**

**-REV. 8 RESTORATION MANUAL 7-30-09**

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- GAS TRENCHING MANUAL APPROVED 7-8-11
- PREMIUM CREW RATES 2011
- PREVAILING WAGE INFORMATION 1[1]
- PREVAILING WAGES CLARIFICATIONS [1][1]
- PRICING WORK SHEET FOR AREA TRENCHING CONTRACT REV J
- MECC COMPLIANCE, OFFER, EXCEPTION AND DISCLOSURE FORM DATED MARCH 28, 2012

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com

- SC-INDEFINITE QUANTITY CONTRACT (4 29 09)[1]

Reference Documents: STC\_Construction.pdf

Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount (USD)

1 NS0168453 EACH 250.00

G-10A - 0.5CTS-2IPS

2 NS0168509 LINEAR

FOOT

75.00

G-1AI - 1.25CTS-2IPS,<50FT

3 NS0168511 LINEAR

FOOT

85.00

G-1AI2 - 1.25CTS-2IPS,<50FT

4 NS0168514 LINEAR

FOOT

65.00

G-1AII2 - 1.25CTS-2IPS,>50FT

5 NS0168523 LINEAR

FOOT

75.00

G-1BI2 - 3IPS-4IPS,<50FT

6 NS0168526 LINEAR

FOOT

70.00

G-1BII2 - 3IPS-4IPS,>50FT

7 NS0168570 LINEAR

FOOT

85.00

G-1PAII2 - 1.25CTS-2IPS,>50FT

8 NS0168616 EACH 250.00

G-23A - 2-4IN CLAMP

9 NS0168617 EACH 350.00

G-23B - 6-8IN CLAMP

10 NS0168618 EACH 450.00

G-23C - 10-12IN CLAMP

11 NS0168626 LINEAR

FOOT

95.00

G-26A - UP TO 4IN

12 NS0168627 LINEAR

FOOT

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105.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

G-26AA - UP TO 4IN

13 NS0168628 LINEAR

FOOT

110.00

G-26AC - UP TO 4IN

14 NS0168629 LINEAR

FOOT

67.00

G-26AE - UP TO 4IN

15 NS0168631 LINEAR

FOOT

85.00

G-26AWK - UP TO 4IN

16 NS0168632 LINEAR

FOOT

128.00

G-26B - 6IN-8IN

17 NS0170651 EACH 1750.00

T129TB - TEST BORING TO 30 FT

18 NS0168635 LINEAR

FOOT

65.00

G-26BE - 6IN-8IN

19 NS0168637 LINEAR

FOOT

95.00

G-26BWK - 6IN-8IN

20 NS0168638 LINEAR

FOOT

180.00

G-26C - 10IN-12IN

21 NS0168651 LINEAR

FOOT

117.00

G-26PA - UP TO 4IN

22 NS0168653 LINEAR

FOOT

149.00

G-26PB - 6IN-8IN

23 NS0168655 LINEAR

FOOT

170.00

G-26PC - 10IN-12IN

24 NS0168660 LINEAR

FOOT

19.00

G-27A - 2IN-4IN

25 NS0168663 LINEAR

FOOT

27.00

G-27B - 6IN-8IN

26 NS0168665 LINEAR

FOOT

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57.00  
G-27C - 12IN  
27 NS0168683 LINEAR  
FOOT  
75.00  
G-2AI2 - 1CTS-2IPS,<50FT  
28 NS0168686 LINEAR  
FOOT  
65.00  
G-2AII2 - 1CTS-2IPS,>50FT  
29 NS0168716 LINEAR  
FOOT  
90.00  
G-2PAI2 - 1CTS-2IPS,<50FT  
30 NS0168780 EACH 2399.00  
G-3AI2 - 1CTS-1.25CTS,<50FT  
31 NS0168783 EACH 2649.00  
G-3AII2 - 1CTS-1.25CTS,>50FT  
COMPASS BPA 4036923, 6  
Proprietary and Confidential Page 4 of 12  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
32 NS0168846 EACH 100.00  
G-42A - OFFSET-UPTO4IN  
33 NS0168864 EACH 2105.00  
G-4AI2 - 0.5CTS,<50FT  
34 NS0168867 EACH 2600.00  
G-4AII2 - 0.5CTS,>50FT  
35 NS0169078 EACH 1500.00  
G-9A - 0.5CTS-2IPS  
36 NS0170603 SQUARE  
FOOT  
14.75  
T103 - TONGUE/GROVESHEETING  
37 NS0170604 SQUARE  
FOOT  
9.85  
T104 - T/GSHEETINGFURNOTHER  
38 NS0170837 EACH 200.00  
T155 - HINGEDCURBPANEL  
39 NS0170838 EACH 2050.00  
T156 - B/O,DISPBOX/CONDUITS  
40 NS0170844 EACH 9975.00  
T159 - BREAKEXISTMANHOLE  
41 NS0170863 EACH 4505.00  
T167 - INTERNALSEWERMATERIA  
42 NS0170927 CYLIND  
ER  
278.00  
T182 - FIBERGLASS CONDUIT  
43 NS0170951 CYLIND  
ER  
601.00  
T190 - STRUCTURALCONC<5CY  
44 NS0170961 EACH 2600.00  
T200 - LUMPSUMLAYOUTS  
45 NS0170962 EACH 2800.00  
T200A - T200 FOR PROTECTSTR



**Contains Confidential Commercial Information**

46 NS0170975 HOUR 90.00  
T210 - DEWATERING  
47 NS0170979 EACH 175.00  
T211 - MOBILIZATION  
48 NS0170999 EACH 3500.00  
T215 - MOB WITHIN 4HRS  
49 NS0171008 EACH 20000.00  
T220 - MOB/DEMOBPIILERIG

50 NS0171009 EACH 1000.00  
T221 - F+IWOODPILES  
51 NS0171010 LINEAR  
FOOT  
40.00

T222 - ADDWOODPILES  
52 NS0171022 SQUARE  
FOOT  
54.75

T232 - F/I/REMVSTLSHEET  
53 NS0171023 POUND 4.95  
T233 - F/I/REMVSTLWHALERS

54 NS0171046 CYLIND  
ER  
620.00

T2SCCO - CO2EMERGWOR  
55 NS0171047 CYLIND  
ER  
650.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

T2SCCOA - T2SCCOPROTECTSTR  
56 NS0171136 LINEAR  
FOOT  
30.00

T33A - BEVEL CUT CONC. BASE  
57 NS0171181 CYLIND  
ER  
208.00

T43REV1 - EXCAMACHINEHAND  
58 NS0171182 CYLIND  
ER  
250.00

T43REV2 - DEEPER/ADDTNEXCAV  
59 NS0171201 LINEAR  
FOOT  
87.41

T46 - LINEARFT 3-0FTORLESS  
60 NS0171207 LINEAR  
FOOT  
94.75

T46A - LF 3.0FTOR LESS LL14  
61 NS0171220 LINEAR  
FOOT  
5.55

T46D - LFTCONDUIT>8DUCTS  
62 NS0171236 LINEAR  
FOOT

**Contains Confidential Commercial Information**

35.00  
T46UPL - LFITEMSUNPAVAREA  
63 NS0171241 LINEAR  
FOOT  
88.75  
T47 - LINFT 3.1-5.0FT  
64 NS0171247 LINEAR  
FOOT  
97.75  
T47A - LINFT 3.1-5.0FT LL14  
65 NS0171259 LINEAR  
FOOT  
93.65  
T47L - LFTRENCH=>5FTDP  
66 NS0171265 LINEAR  
FOOT  
102.65  
T47LA - LFTRENCH=>5FTDPPROT  
67 NS0171273 LINEAR  
FOOT  
45.00  
T47LUPL - LFITEMSUNPAVAREA>5FT  
68 NS0171286 LINEAR  
FOOT  
41.00  
T47UPL - LFITEMSUNPAVAREA  
69 NS0171303 CYLIND  
ER  
280.00  
T50 - ROCK  
70 NS0171307 CYLIND  
ER  
420.00  
T51 - ROCK REMOVAL-DISPOSE  
71 NS0171367 CYLIND  
ER  
45.00  
T96 - CRUSHED STONE  
72 NS0171378 EACH 5857.00  
TFC1 - FCSTRUCT1SMALL  
73 NS0171379 EACH 15750.00  
TFC2 - FCSTRUCT2MEDIUM  
74 NS0171380 EACH 25755.00  
TFC3 - FCSTRUCT3LARGE  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
75 NS0171395 EACH 3700.00  
TPC1 - PCSTRUCT1SMALL  
76 NS0171396 EACH 9850.00  
TPC2 - PCSTRUCT2MEDIUM  
77 NS0171397 EACH 14700.00  
TPC3 - PCSTRUCT3LARGE  
78 NS0171400 EACH 3750.00  
TPCSL1 - PCSLTSTRUCTSMALL1  
79 NS0171401 EACH 13150.00  
TPCSL2 - PCSLTSTRUCTLARGE2

**Contains Confidential Commercial Information**

80 NS0171024 CYLIND  
ER  
950.00  
T234 - REINFCONCMATW/FRM  
81 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
82 NS0170141 EACH 10.00  
PARTIAL - PATRIALPAYMENT  
83 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT  
84 NS0170249 EACH 10.00  
PROGRESS - PROGRESSPAYMENT  
85 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION  
86 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE  
87 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION  
88 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE

**This line CANCELED on 16-OCT-2012**

89 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
Blanket Purchase Agreement 4036923,  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

## **Contains Confidential Commercial Information**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

Blanket Purchase Agreement 4036923,

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which

## **Contains Confidential Commercial Information**

implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)  
The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4036923,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

Blanket Purchase Agreement 4036923,

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 4

CONTRACTOR : STEP MAR CONTRACTING CORP

PURCHASE ORDER NO. : 4037051

BID COMPARISON:

\$5,492,633

\$5,678,250

\$6,903,833

\$7,875,733

\$9,240,716

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4037051**

Revision **4**

PO Approved Date **01/28/2013**

Revision Date **01/28/2013**

Current Buyer **David Blaut**

Supplier: **STEP MAR CONTRACTING CORP**

**COMPASS 321 FORT LEE RD**

**LEONIA, NJ 07605**

**UNITED STATES**

Supplier

Contact:

**JACOVINO MARIO**

**2019475252**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10618 Immediate N/A N/A**

Effective Start Date Effective End Date Amount Agreed (USD)

**10/01/2012 09/30/2015 5,090,909.00**

**Notes:** REGRADE FOR MANHOLE CASTINGS - QUEENS

THIS IS A 3 YEAR CONTRACT

YEAR 1 10/1/12-9/30/13

YEAR 2 10/1/13-9/30/14

YEAR 3 10/1/14-9/30/15

NO WORK CAN BEGIN WITHOUT A HASP

Discounted multiplier Factor Against Con Edison L&E Rates 0.975%

For Work in Manhattan, Queens rates will have a 1.15 Multiplier factor applied

Step- Mar

This contract is governed by and includes all documents incorporated in, and distributed by Con Edison,

in connection its agents including Perfect Commerce Bid Event # 36679 dated January 5, 2012

including but not limited to the following:

Con Edison Standard Terms and Conditions for Construction Dated December 7, 2010

Bid Price Sheet Rev-D submitted on Feb. 28, 2012

Revised Bid Price sheet submitted on March 16, 2010

Re-grade Special Conditions 2012 Rev 6

Castings Re-grades Requirement Summary

Clarifications Dated Feb 21 2012 Number 1

EO-380029-0-1

EO-100167

EO-100271

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EO-1008

EO-10321-B

EO-1092

EO-1125

EO-3113

SC-Indefinite Quantity Contract 4 29 09

Step Mar Compliance, offer, exception and disclosure Form Dated Feb. 27, 2012

Escalation for year two is 4% escalation. Escalation for year three is an additional 5% or 9% from year one total.

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf  
STC\_Construction.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

2 NS0170141 EACH 1.00

PARTIAL - PATRIALPAYMENT

3 NS0170248 EACH 1.00

PREMIUM - PREMDIFFPAYMENT

4 NS0170249 EACH 1.00

PROGRESS - PROGRESSPAYMENT

5 NS0168393 EACH 1.00

BILCORRECT - BILL CORRECTION

6 NS0168423 EACH 1.00

EQPINV - EQUIPMENTINVOICE

7 NS0168451 EACH 1.00

FINECORRCT - FINENOVCORRECTION

8 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

**This line CANCELED on 18-OCT-2012**

9 NS0171140 EACH 1.00

T350 - TIMEEQPPAYMENT

10 NS0170880 EACH 1662.50

T171RG - REGRADEEXIST=<25SF

11 NS0170887 EACH 1662.50

T172RG - REGRADEEXIST=<40SF

12 NS0170896 EACH 1781.25

T173RG - REGDEEXIST40TO60SF

13 NS0170905 EACH 2185.00

T174RG - REGRADEEXIST>60SF

14 NS0170639 EACH 23.75

T125G - BRK/DISPSDWKASPEXC

15 NS0170609 SQUARE

FOOT

1.90

T110 - VEHICULAR PLATES

16 NS0170916 EACH 95.00

T179 - DELIVERINSTALLCOVER

17 NS0170951 CYLIND

ER

1325.25

T190 - STRUCTURALCONC<5CY

18 NS0170952 CYLIND

ER

612.75

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**Contains Confidential Commercial Information**

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

T191 - STRUCTURALCONC>5CY

19 NS0170979 EACH 285.00

T211 - MOBILIZATION

20 NS0170987 HOUR 308.75

T212 - PREMIUMCREWHOUR

21 NS0170994 HOUR 332.50

T213 - NIGHTPREMIUMCREWHR

22 NS0171050 CYLIND

ER

28.50

T30 - TEMPORARY MACADAM

23 NS0171329 CYLIND

ER

660.25

T6R - HEAVYREINCONRDBRKRES

24 NS0171344 CYLIND

ER

190.00

T7R - BRKRESTSDWKDRIV

25 NS0170866 EACH 285.00

T170 - REGRADEGASVALVE

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

## **Contains Confidential Commercial Information**

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

Blanket Purchase Agreement 4037051,

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's

## **Contains Confidential Commercial Information**

Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4037051,

4

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

Appendix A.

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**Gift Policy**

**Contains Confidential Commercial Information**

Blanket Purchase Agreement 4037051,

4

Proprietary and Confidential Page 9 of 9

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

**Contains Confidential Commercial Information**

ATTACHMENT NO. 5

CONTRACTOR : VALI INDUSTRIES INC

PURCHASE ORDER NO. : 4038431

BID COMPARISON:

\$14,358,746

\$15,284,850

\$16,916,395

\$26,388,446

**Contains Confidential Commercial Information**

COMPASS BPA 4038431, 8

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4038431**

Revision **8**

PO Approved Date **01/28/2013**

Revision Date **01/28/2013**

Current Buyer **David Blaut**

Supplier: **VALI INDUSTRIES INC**

**COMPASS 90 SCOTT AVE**

**BROOKLYN, NY 11237**

**UNITED STATES**

Supplier

Contact:

**ALI JR VINCENT**

**(718) 821-5555**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10075 Immediate N/A DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)

**10/01/2012 09/30/2015 13,998,965.00**

**Notes:** REGRADE FOR MANHOLE CASTING - MANHATTAN

THIS IS A 3 YEAR CONTRACT

YEAR 1 10/1/12-9/30/13

YEAR 2 10/1/13-9/30/14

YEAR 3 10/1/14-9/30/15

NO WORK CAN BEGIN WITHOUT A HASP

Discounted multiplier Factor Against Con Edison L&E Rates 0.95

For work in the Outer Boroughs, Manhattan Rates will be discounted by 10%

VALI MANHATTAN,

This contract is governed by and includes all documents incorporated in, and distributed by Con Edison, in connection with Perfect Commerce Bid Event # 36774 dated January 5, 2012 including all clarifications, drawings, specifications and attachments.

Con Edison Standard Terms and Conditions for Construction Dated December 7, 2010

Bid Price Sheet Rev-D submitted on Feb. 28, 2012

380029-0-1

Con Edison Trenching Manual Rev 7

Castings Re-grades Requirement Summary

Clarifications Dated Feb 21 2012 Number 1

EO-100167

EO-100271

EO-1008

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EO-10321-B

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EO-1092

EO-1125

EO-3113

Regrade Special Conditions 2012 Rev 6

SC-Indefinite Quantity Contract dated 4 29 09

Vali Compliance, offer, exception and disclosure Form Dated Feb. 24, 2012

Prices are firm for a period of two years starting October 1, 2012. Escalation for third year only is 6%.

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf

STC\_Construction.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

2 NS0170141 EACH 10.00

PARTIAL - PATRIALPAYMENT

3 NS0170248 EACH 1.00

PREMIUM - PREMDIFFPAYMENT

4 NS0170249 EACH 10.00

PROGRESS - PROGRESSPAYMENT

5 NS0168393 EACH 1.00

BILCORRECT - BILL CORRECTION

6 NS0168423 EACH 1.00

EQPINV - EQUIPMENTINVOICE

7 NS0168451 EACH 1.00

FINECORRCT - FINENOVCORRECTION

8 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

**This line CANCELED on 18-OCT-2012**

9 NS0171140 EACH 1.00

T350 - TIMEEQPPAYMENT

10 NS0170880 EACH 1925.00

T171RG - REGRADEEXIST=<25SF

11 NS0170887 EACH 2025.00

T172RG - REGRADEEXIST=<40SF

12 NS0170896 EACH 3075.00

T173RG - REGDEEXIST40TO60SF

13 NS0170905 EACH 3450.00

T174RG - REGRADEEXIST>60SF

14 NS0170639 EACH 25.00

T125G - BRK/DISPSDWKASPEXC

15 NS0170874 EACH 990.00

T171D - BRKMHROOFPROTFACIL

**This line CANCELED on 19-OCT-2012**

16 NS0170609 SQUARE

FOOT

3.00

T110 - VEHICULAR PLATES

17 NS0170916 EACH 200.00

T179 - DELIVERINSTALLCOVER

18 NS0170951 CYLIND 995.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

ER



**Contains Confidential Commercial Information**

T190 - STRUCTURALCONC<5CY  
19 NS0170952 CYLIND  
ER  
895.00

T191 - STRUCTURALCONC>5CY  
20 NS0170979 EACH 200.00  
T211 - MOBILIZATION  
21 NS0170987 HOUR 125.00  
T212 - PREMIUMCREWHOUR  
22 NS0170994 HOUR 200.00  
T213 - NIGHTPREMIUMCREWHR  
23 NS0171050 CYLIND  
ER  
225.00

T30 - TEMPORARY MACADAM  
24 NS0171329 CYLIND  
ER  
795.00

T6R - HEAVYREINCONRDBRKRES  
25 NS0171344 CYLIND  
ER  
550.00

T7R - BRKRESTSDWKDRIV  
26 NS0170866 EACH 1150.00  
T170 - REGRADEGASVALVE  
27 NS0168241 CYLIND  
ER  
990.00

75M - REPLACE SLAB/CASTING  
28 NS0170732 LINEAR  
FOOT  
10.00

T13RC - SAWCUT,REM,DESPASPH  
29 NS0171145 CYLIND  
ER  
1400.00

T400 - FURN,INSTALPAVNOEXCV  
30 NS0171404 LINEAR  
FOOT  
17.00

TRS424 - TRAF CONT STRIP 6IN  
31 NS0171405 LINEAR  
FOOT  
26.00

TRS425 - TRAF STRIP >6IN  
Blanket Purchase Agreement 4038431,  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the

## **Contains Confidential Commercial Information**

contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

Blanket Purchase Agreement 4038431,

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Proprietary and Confidential Page 7 of 9

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4038431,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal

## Contains Confidential Commercial Information

Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

337730

### Gift Policy

Blanket Purchase Agreement 4038431,

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### Signatures

#### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 6

CONTRACTOR: VALI INDUSTRIES INC

PURCHASE ORDER NO.: 4039209

BID COMPARISON:

\$6,422,250

\$7,367,150

\$8,839,104

\$9,786,996

**Contains Confidential Commercial Information**

COMPASS BPA 4039209, 8

Proprietary and Confidential Page 1 of 9

**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4039209**

Revision **8**

PO Approved Date **01/28/2013**

Revision Date **01/28/2013**

Current Buyer **David Blaut**

Supplier: **VALI INDUSTRIES INC**

**COMPASS 90 SCOTT AVE**

**BROOKLYN, NY 11237**

**UNITED STATES**

Supplier

Contact:

**ALI JR VINCENT**

**(718) 821-5555**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10075 Immediate N/A DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)

**10/01/2012 09/30/2015 5,892,775.00**

**Notes: REGRADE FOR MANHOLE CASTINGS - BROOKLYN**

**NO WORK CAN BEGIN WITHOUT A HASP**

**THIS IS A 3 YEAR CONTRACT**

**YEAR 1 10/1/12-9/30/13**

**YEAR 2 10/1/13-9/30/14**

**YEAR 3 10/1/14-9/30/15**

Discounted multiplier Factor Against Con Edison L&E Rates 0.95

For Work in Manhattan, Brooklyn Rates will have a 1.12 Multiplier applied

**VALI INDUSTRIES**

This contract is governed by and includes all documents incorporated in, and distributed by Con Edison, in connection with Perfect Commerce Bid Event # 36630 dated January 5, 2012 including, but not limited to the following:

Con Edison Standard Terms and Conditions for Construction Dated December 7, 2010

Bid Price Sheet Rev-D submitted on Feb. 28, 2012

380029-0-1

Con Edison Trenching Manual Rev 7

Con Edison Castings Re-grades Requirement Summary

Clarifications Dated Feb 21 2012 Number 1

EO-100167

EO-100271

EO-1008

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EO-10321-B

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EO-1092

EO-1125

EO-3113

Regrade Special Conditions 2012 Rev 6

SC-Indefinite Quantity Contract 4 29 09

Vali Compliance, offer, exception and disclosure Form Dated Feb. 24, 2012

Prices are firm for a period of two years starting October 1, 2012. Escalation for third year only is 2%.

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf

STC\_Construction.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

2 NS0170141 EACH 10.00

PARTIAL - PATRIALPAYMENT

3 NS0170248 EACH 1.00

PREMIUM - PREMDIFFPAYMENT

4 NS0170249 EACH 10.00

PROGRESS - PROGRESSPAYMENT

5 NS0168393 EACH 1.00

BILCORRECT - BILL CORRECTION

6 NS0168423 EACH 1.00

EQPINV - EQUIPMENTINVOICE

7 NS0168451 EACH 1.00

FINECORRCT - FINENOVCORRECTION

8 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

**This line CANCELED on 18-OCT-2012**

9 NS0171140 EACH 1.00

T350 - TIMEEQPPAYMENT

10 NS0170880 EACH 1600.00

T171RG - REGRADEEXIST=<25SF

11 NS0170887 EACH 1675.00

T172RG - REGRADEEXIST=<40SF

12 NS0170896 EACH 2775.00

T173RG - REGDEEXIST40TO60SF

13 NS0170905 EACH 2925.00

T174RG - REGRADEEXIST>60SF

14 NS0170639 EACH 25.00

T125G - BRK/DISPSDWKASPEXC

15 NS0170880 EACH 1500.00

T171RG - REGRADEEXIST=<25SF

**This line CANCELED on 19-OCT-2012**

16 NS0170609 SQUARE

FOOT

3.00

T110 - VEHICULAR PLATES

17 NS0170916 EACH 200.00

T179 - DELIVERINSTALLCOVER

18 NS0170951 CYLIND 995.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

ER

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T190 - STRUCTURALCONC<5CY  
19 NS0170952 CYLIND  
ER  
895.00

T191 - STRUCTURALCONC>5CY  
20 NS0170979 EACH 200.00

T211 - MOBILIZATION  
21 NS0170987 HOUR 250.00  
T212 - PREMIUMCREWHOUR  
22 NS0170994 HOUR 150.00

T213 - NIGHTPREMIUMCREWHR  
23 NS0171050 CYLIND  
ER  
225.00

T30 - TEMPORARY MACADAM  
24 NS0171329 CYLIND  
ER  
795.00

T6R - HEAVYREINCONRDBRKRES  
25 NS0171344 CYLIND  
ER  
550.00

T7R - BRKRESTSDWKDRIV  
26 NS0170866 EACH 150.00  
T170 - REGRADEGASVALVE  
27 NS0170874 EACH 1500.00

T171D - BRKMHROOFPROTFACIL  
28 NS0170732 LINEAR  
FOOT  
9.00

T13RC - SAWCUT,REM,DESPASPH  
29 NS0171145 CYLIND  
ER  
1250.00

T400 - FURN,INSTALPAVNOEXCV  
30 NS0171404 LINEAR  
FOOT  
17.00

TRS424 - TRAF CONT STRIP 6IN  
31 NS0171405 LINEAR  
FOOT  
26.00

TRS425 - TRAF STRIP >6IN  
Blanket Purchase Agreement 4039209,  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**



## **Contains Confidential Commercial Information**

### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled

## **Contains Confidential Commercial Information**

"Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4039209,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "

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Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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**Gift Policy**

Blanket Purchase Agreement 4039209,

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 7

CONTRACTOR : SICON CONTRACTORS INC

PURCHASE ORDER NO. : 4039704

BID COMPARISON:

\$17,695,000

\$20,082,370

\$20,567,614

\$21,210,651

\$28,602,477

\$31,856,564

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4039704**

Revision **8**

PO Approved Date **01/07/2013**

Revision Date **01/07/2013**

Current Buyer **David Blaut**

Supplier: **SICON CONTRACTORS INC**

**COMPASS 600 SMITH ST**

**BROOKLYN, NY 11232**

**UNITED STATES**

Supplier

Contact:

**FERRARA TEDDY**

**7185962842**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**7431 Immediate N/A N/A**

Effective Start Date Effective End Date Amount Agreed (USD)

**09/01/2012 08/31/2015 18,700,000.00**

**Notes:** STATEN ISLAND AREA TRENCHING CONTRACT

NO WORK IS TO BE PERFORMED WITHOUT AN APPROVED HASP

NO WORK CAN BEGIN WITHOUT A HASP

THIS IS A 3 YEAR CONTRACT - THIS PRICING REMAINS FIRM FOR THE LENGTH OF THE CONTRACT

THIS BPA TAKES THE PLACE OF BPA 4018957.

SICON CONTRACTORS

THIS BPA IS GOVERNED BY PERFECT COMMERCE BID EVENT # 36630 Dated March 8, 2012, and ALL DOCUMENTS REFERENCED THEREIN(WHICH ARE INCORPORATED HEREIN BY REFERENCE) INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

The CONTRACTOR HAS TAKEN NO EXCEPTIONS.

- CON EDISON STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION DATED:

DECEMBER 7, 2010 as MODIFIED BY THE PAYMENT TERMS THAT FOLLOW.

- BROOKLYN QUEENS ITEM USAGE AND CONVERSIONS REV 1

- BROOKLYN QUEENS SPECIAL CONDITIONS MARCH 28 2012 REV 4

- STATEN ISLAND ITEM USAGE and CONVERSIONS REV, 9, DATED APRIL 4, 2012

- STATEN ISLAND SPECIAL CONDITIONS REV, 4, DATED MARCH 28, 2012

- BID PRICE SHEET REV. J, DATED APRIL 6, 2012

- SC-INDEFINITE QUANTITY CONTRACT (4 29 09)[1]

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- REVISED BID PRICE SHEET DATE APRIL 24, 2012

-TRENCHING MANUAL - REVISION 7, NOV. 2009

- REV. 8 RESTORATION MANUAL 7-30-09

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- GAS TRENCHING MANUAL APPROVED 7-8-11
- PREMIUM CREW RATES 2011
- PREVAILING WAGE INFORMATION 1[1]
- PREVAILING WAGES CLARIFICATIONS [1][1]
- PRICING WORK SHEET FOR AREA TRENCHING CONTRACT REV J

Sicon's Compliance, offer exception and disclosure forms dated 3 28 12

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com.

12/13/12 C/O TO ADD THE FOLLOWING ITEMS T46A, T47A, T47LA PER FIELD REQUEST. DB

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf

STC\_Construction.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

2 NS0170141 EACH 1.00

PARTIAL - PATRIALPAYMENT

3 NS0170248 EACH 1.00

PREMIUM - PREMDIFFPAYMENT

4 NS0170249 EACH 1.00

PROGRESS - PROGRESSPAYMENT

5 NS0168393 EACH 1.00

BILCORRECT - BILL CORRECTION

6 NS0168423 EACH 1.00

EQPINV - EQUIPMENTINVOICE

7 NS0168451 EACH 1.00

FINECORRCT - FINENOVCORRECTION

8 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

**This line CANCELED on 16-OCT-2012**

9 NS0171140 EACH 1.00

T350 - TIMEEQPPAYMENT

10 NS0170603 SQUARE

FOOT

10.00

T103 - TONGUE/GROVESHEETING

11 NS0170604 SQUARE

FOOT

10.00

T104 - T/GSHEETINGFURNOTHER

12 NS0170838 EACH 3699.50

T156 - B/O,DISPBOX/CONDUITS

13 NS0170844 EACH 10780.00

T159 - BREAKEXISTMANHOLE

14 NS0170863 EACH 3775.00

T167 - INTERNALSEWERMATERIA

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

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15 NS0170927 CYLIND  
ER  
400.00  
T182 - FIBERGLASS CONDUIT  
16 NS0170951 CYLIND  
ER  
700.00  
T190 - STRUCTURALCONC<5CY  
17 NS0170961 EACH 2842.00  
T200 - LUMPSUMLAYOUTS  
18 NS0170962 EACH 3234.00  
T200A - T200 FOR PROTECTSTR  
19 NS0170979 EACH 3000.00  
T211 - MOBILIZATION  
20 NS0170999 EACH 3000.00  
T215 - MOB WITHIN 4HRS  
21 NS0170651 EACH 1715.00  
T129TB - TEST BORING TO 30 FT  
22 NS0171022 SQUARE  
FOOT  
55.00  
T232 - F/I/REMVSTLSHEET  
23 NS0171181 CYLIND  
ER  
500.00  
T43REV1 - EXCAMACHINEHAND  
24 NS0171182 CYLIND  
ER  
275.00  
T43REV2 - DEEPER/ADDTNEXCAV  
25 NS0171220 LINEAR  
FOOT  
14.70  
T46D - LFTCONDUIT>8DUCTS  
26 NS0171378 EACH 4410.00  
TFC1 - FCSTRUCT1SMALL  
27 NS0171379 EACH 14500.00  
TFC2 - FCSTRUCT2MEDIUM  
28 NS0171380 EACH 22000.00  
TFC3 - FCSTRUCT3LARGE  
29 NS0171395 EACH 3430.00  
TPC1 - PCSTRUCT1SMALL  
30 NS0171396 EACH 9800.00  
TPC2 - PCSTRUCT2MEDIUM  
31 NS0171397 EACH 14210.00  
TPC3 - PCSTRUCT3LARGE  
32 NS0171400 EACH 3430.00  
TPCSL1 - PCSLTSTRUCTSMALL1  
33 NS0171401 EACH 12985.00  
TPCSL2 - PCSLTSTRUCTLARGE2  
34 NS0171229 LINEAR  
FOOT  
92.00  
T46REV1 - LINEARFT 3-0FTORLESS  
35 NS0171278 LINEAR  
FOOT  
95.00  
T47REV1 - LINEARFT 3.1FTTO5.0  
36 NS0171272 LINEAR

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FOOT  
250.00  
T47LREV1 - LINEARFT DPT>5.0FT  
37 NS0171304 CYLIND  
ER  
300.00  
COMPASS BPA 4039704, 8  
Proprietary and Confidential Page 4 of 11  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
T50REV1 - BRK/REMOVAL/DISPROCK  
38 NS0171311 CYLIND  
ER  
400.00  
T51REV1 - ROCK REMOVAL-DISPOSE  
39 NS0171162 CYLIND  
ER  
935.00  
T40VC - EXCBYVACTRK.0.1-1CY  
40 NS0171163 CYLIND  
ER  
735.00  
T40VD - EXCBYVACTRK.1.1-5CY  
41 NS0171164 CYLIND  
ER  
510.00  
T40VE - EXCBYVACTK.5.1-10CY  
42 NS0171296 EACH 1000.00  
T49 - URDREPAIR0.1-2.0CY  
43 NS0171297 EACH 1500.00  
T49A - URDREPAIR2.1-4.0CY  
44 NS0170876 EACH 1666.00  
T171Q - B/OREPLCASTTO25SF  
45 NS0170860 EACH 1176.00  
T161R - REGRDSILOW/RESTORE  
46 NS0170632 EACH 980.00  
T125 - TESTPIT 0.1-4.0 CY  
47 NS0170641 EACH 1960.00  
T126 - TESTPIT 4.1-8.0 CY  
48 NS0170839 EACH 1225.00  
T156A - EXP,REM,DISPURDBOX  
49 NS0170840 CYLIND  
ER  
3430.00  
T156B - B/O, DISP SB  
50 NS0170846 CYLIND  
ER  
1960.00  
T159B - B/O, DISP MH  
51 NS0170861 LINEAR  
FOOT  
39.20  
T165 - SEWERCONNECTION<13-0  
52 NS0170862 LINEAR  
FOOT  
50.00  
T166 - SEWERCONNECTION>13  
53 NS0170952 CYLIND



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ER  
800.00  
T191 - STRUCTURALCONC>5CY  
54 NS0170953 CYLIND  
ER  
300.00  
T192 - SIMPLECONCNOREINF  
55 NS0171344 CYLIND  
ER  
980.00  
T7R - BRKRESTSDWKDRIV  
56 NS0170948 EACH 735.00  
T188 - 2"-5"RISERBENDPIPE  
57 NS0169657 SQUARE  
FOOT  
19.60  
GT-62 - RECESSPLATELFITEM  
58 NS0171201 12/18/2012 LINEAR  
FOOT  
135.00  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

T46 - LINEARFT 3-0FTORLESS

59 NS0171207 LINEAR

FOOT

135.00

T46A - LF 3.0FTOR LESS LL14

60 NS0171265 LINEAR

FOOT

295.00

T47LA - LFTRENCH=>5FTDPPROT

61 NS0171247 LINEAR

FOOT

140.00

T47A - LINFT 3.1-5.0FT LL14

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**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract

## **Contains Confidential Commercial Information**

with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

Blanket Purchase Agreement 4039704,

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## **Contains Confidential Commercial Information**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4039704,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of

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Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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**Gift Policy**

Blanket Purchase Agreement 4039704,

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 8

CONTRACTOR : MECC CONTRACTNG INC

PURCHASE ORDER NO. : 4041665

BID COMPARISON:

\$19,721,775

\$22,969,254

\$23,416,976

\$26,622,242

\$30,778,619

\$34,570,267

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4041665**

Revision **2**

PO Approved Date **10/16/2012**

Revision Date **10/16/2012**

Current Buyer **David Blaut**

Supplier: **MECC CONTRACTING INC**

**COMPASS 21 AUTUMN AVE**

**BROOKLYN, NY 11208**

**UNITED STATES**

Supplier

Contact:

**Moccia Luigi**

**7182350800**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**8809 Immediate N/A DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)

**09/01/2012 08/31/2015 22,200,000.00**

**Notes: BROOKLYN EAST AREA TRENCHING CONTRACT**

**NO WORK CAN BEGIN WITHOUT A HASP**

**THIS IS A 3 YEAR CONTRACT**

**MECC CONTRACTING**

**THIS BPA IS GOVERNED BY PERFECT COMMERCE BID EVENT # 36630 Dated March 8, 2012, and ALL DOCUMENTS REFERENCED THEREIN (WHICH ARE INCORPORATED HEREIN BY REFERENCE), INCLUDING, BUT NOT LIMITED, TO THE FOLLOWING:**

**The CONTRACTOR HAS TAKEN NO EXCEPTIONS.**

**- CON EDISON STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION DATED:**

**DECEMBER 7, 2010**

**-BROOKLYN QUEENS ITEM USAGE AND CONVERSIONS REV 1**

**-BROOKLYN QUEENS SPECIAL CONDITIONS MARCH 28 2012 REV 4**

**- BID PRICE SHEET REV. J, DATED APRIL 6, 2012**

**- REVISED BID PRICE SHEET DATE APRIL 26, 2012**

**- TRENCHING MANUAL - REVISION 7.PDF NOV. 2009**

**-GAS TRENCHING MANUAL APPROVED 7-8-11**

**- -PREMIUM CREW RATES.DOCX 2011**

**-PREVAILING WAGE INFORMATION 1[1]**

**- PREVAILING WAGES CLARIFICATIONS [1][1]**

**-PRICING WORK SHEET FOR AREA TRENCHING CONTRACT REV J**

**COMPASS BPA 4041665, 2**

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**-MECC COMPLIANCE, OFFER, EXCEPTION AND DISCLOSURE FORM DATED MARCH 28, 2012**

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- SC-INDEFINITE QUANTITY CONTRACT (4 29 09)[1].DOC

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com

Prices are firm for all three years

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf  
STC\_Construction.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

2 NS0170141 EACH 1.00

PARTIAL - PATRIALPAYMENT

3 NS0170248 EACH 1.00

PREMIUM - PREMDIFFPAYMENT

4 NS0170249 EACH 1.00

PROGRESS - PROGRESSPAYMENT

5 NS0168393 EACH 1.00

BILCORRECT - BILL CORRECTION

6 NS0168423 EACH 1.00

EQPINV - EQUIPMENTINVOICE

7 NS0168451 EACH 1.00

FINECORRCT - FINENOVCORRECTION

8 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

**This line CANCELED on 16-OCT-2012**

9 NS0171140 EACH 1.00

T350 - TIMEEQPPAYMENT

10 NS0170603 SQUARE

FOOT

15.00

T103 - TONGUE/GROVESHEETING

11 NS0170604 SQUARE

FOOT

9.85

T104 - T/GSHEETINGFURNOTHER

12 NS0170837 EACH 200.00

T155 - HINGEDCURBPANEL

13 NS0170838 EACH 2050.00

T156 - B/O,DISPBOX/CONDUITS

14 NS0170844 EACH 10700.00

T159 - BREAKEXISTMANHOLE

15 NS0170863 EACH 4505.00

T167 - INTERNALSEWERMATERIA

16 NS0170927 CYLIND

ER

278.00

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Proprietary and Confidential Page 3 of 10

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

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T182 - FIBERGLASS CONDUIT  
17 NS0170951 CYLIND  
ER  
601.00  
T190 - STRUCTURALCONC<5CY  
18 NS0170961 EACH 2600.00  
T200 - LUMPSUMLAYOUTS  
19 NS0170962 EACH 2800.00  
T200A - T200 FOR PROTECTSTR  
20 NS0170975 HOUR 90.00  
T210 - DEWATERING  
21 NS0170979 EACH 175.00  
T211 - MOBILIZATION  
22 NS0170999 EACH 3400.00  
T215 - MOB WITHIN 4HRS  
23 NS0171008 EACH 20000.00  
T220 - MOB/DEMOBPILE  
24 NS0171009 EACH 1000.00  
T221 - F+IWOODPILES  
25 NS0171010 LINEAR  
FOOT  
40.00  
T222 - ADDWOODPILES  
26 NS0171022 SQUARE  
FOOT  
54.75  
T232 - F/I/REMVSTLSHEET  
27 NS0171023 POUND 4.95  
T233 - F/I/REMVSTLWHALERS  
28 NS0171046 CYLIND  
ER  
620.00  
T2SCCO - CO2EMERGWOR  
29 NS0171047 CYLIND  
ER  
650.00  
T2SCCOA - T2SCCOPROTECTSTR  
30 NS0171136 LINEAR  
FOOT  
30.00  
T33A - BEVEL CUT CONC. BASE  
31 NS0171181 CYLIND  
ER  
208.00  
T43REV1 - EXCAMACHINEHAND  
32 NS0171182 CYLIND  
ER  
250.00  
T43REV2 - DEEPER/ADDTNEXCAV  
33 NS0171201 LINEAR  
FOOT  
86.97  
T46 - LINEARFT 3-0FTORLESS  
34 NS0171207 LINEAR  
FOOT  
94.75  
T46A - LF 3.0FTOR LESS LL14  
35 NS0171220 LINEAR  
FOOT



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5.40

T46D - LFTCONDUIT>8DUCTS

36 NS0171236 LINEAR

FOOT

37.00

T46UPL - LFITEMSUNPAVAREA

37 NS0171241 LINEAR

FOOT

88.75

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

T47 - LINFT 3.1-5.0FT

38 NS0171247 LINEAR

FOOT

97.75

T47A - LINFT 3.1-5.0FT LL14

39 NS0171259 LINEAR

FOOT

93.65

T47L - LFTRENCH=>5FTDP

40 NS0171265 LINEAR

FOOT

102.65

T47LA - LFTRENCH=>5FTDPPROT

41 NS0171273 LINEAR

FOOT

45.00

T47LUPL - LFITEMSUNPAVAREA>5FT

42 NS0171286 LINEAR

FOOT

41.00

T47UPL - LFITEMSUNPAVAREA

43 NS0171303 CYLIND

ER

280.00

T50 - ROCK

44 NS0171307 CYLIND

ER

420.00

T51 - ROCK REMOVAL-DISPOSE

45 NS0171367 CYLIND

ER

45.00

T96 - CRUSHED STONE

46 NS0171378 EACH 5857.00

TFC1 - FCSTRUCT1SMALL

47 NS0171379 EACH 15650.00

TFC2 - FCSTRUCT2MEDIUM

48 NS0171380 EACH 25755.00

TFC3 - FCSTRUCT3LARGE

49 NS0171395 EACH 3700.00

TPC1 - PCSTRUCT1SMALL

50 NS0171396 EACH 9850.00

TPC2 - PCSTRUCT2MEDIUM

51 NS0171397 EACH 14700.00

TPC3 - PCSTRUCT3LARGE

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52 NS0171400 EACH 3750.00  
TPCSL1 - PCSLTSTRUCTSMALL1  
53 NS0171401 EACH 13150.00  
TPCSL2 - PCSLTSTRUCTLARGE2  
54 NS0171024 CYLIND  
ER  
950.00  
T234 - REINFCONCMATW/FRM  
55 NS0170651 EACH 1750.00  
T129TB - TEST BORING TO 30 FT  
Blanket Purchase Agreement 4041665,  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARRMENT BY THE FEDERAL GOVERNMENT**

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The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

Blanket Purchase Agreement 4041665,

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section

## Contains Confidential Commercial Information

52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4041665,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

337730

### **Gift Policy**

Blanket Purchase Agreement 4041665,

2

Proprietary and Confidential Page 10 of 10

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all

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contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 9

CONTRACTOR : SICON CONTRACTORS INC

PURCHASE ORDER NO. : 4041831

BID COMPARISON:

\$19,712,617

\$23,204,566

\$23,416,976

\$26,622,242

\$32,013,637

\$34,686,240

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COMPASS BPA 4041831, 4

Proprietary and Confidential Page 1 of 10

**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4041831**

Revision **4**

PO Approved Date **01/22/2013**

Revision Date **01/22/2013**

Current Buyer **David Blaut**

Supplier: **SICON CONTRACTORS INC**

**COMPASS 600 SMITH ST**

**BROOKLYN, NY 11232**

**UNITED STATES**

Supplier

Contact:

**FERRARA TEDDY**

**7185962842**

Key

ConEd

Contact:

**David Blaut**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**7431 Immediate N/A DELIVERED**

Effective Start Date Effective End Date Amount Agreed (USD)

**09/01/2012 08/31/2015 23,300,000.00**

**Notes:** BROOKLYN WEST AREA TRENCHING CONTRACT (ELECTRIC)

NO WORK CAN BEGIN WITHOUT A HASP

THIS IS A 3 YEAR CONTRACT

SICON CONTRACTORS

THIS BPA IS GOVERNED BY PERFECT COMMERCE BID EVENT # 36630 Dated March 8, 2012, and ALL DOCUMENTS REFERENCED THEREIN (WHICH ARE INCORPORATED HEREIN BY REFERENCE), INCLUDING, BUT NOT LIMITED, TO THE FOLLOWING:

The CONTRACTOR HAS TAKEN NO EXCEPTIONS.

- CON EDISON STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION DATED: DECEMBER 7, 2010.

- BROOKLYN QUEENS ITEM USAGE AND CONVERSIONS REV 1

- BROOKLYN QUEENS SPECIAL CONDITIONS MARCH 28 2012 REV 4

- STATEN ISLAND ITEM USAGE and CONVERSIONS REV, 9, DATED APRIL 4, 2012

- STATEN ISLAND SPECIAL CONDITIONS REV, 4, DATED MARCH 28, 2012

- BID PRICE SHEET REV. J, DATED APRIL 6, 2012

- REVISED BID PRICE SHEET DATE APRIL 24, 2012

- TRENCHING MANUAL - REVISION 7, NOV. 2009

- REV. 8 RESTORATION MANUAL 7-30-09

- GAS TRENCHING MANUAL APPROVED 7-8-11

- PREMIUM CREW RATES 2011

COMPASS BPA 4041831, 4

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- PREVAILING WAGE INFORMATION 1[1]

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- PREVAILING WAGES CLARIFICATIONS [1][1]
- PRICING WORK SHEET FOR AREA TRENCHING CONTRACT REV J
- SICON COMPLIANCE, OFFER, EXCEPTION AND DISCLOSURE FORM DATED APRIL 9, 2012
- SC-INDEFINITE QUANTITY CONTRACT (4 29 09)[1]

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com

Prices are firm for all three years

Reference Documents: Supplemental\_Construction\_Contract\_Requirements\_(SCCR).pdf  
STC\_Construction.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

- 1 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE
- 2 NS0170141 EACH 1.00  
PARTIAL - PATRIALPAYMENT
- 3 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT
- 4 NS0170249 EACH 1.00  
PROGRESS - PROGRESSPAYMENT
- 5 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION
- 6 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE
- 7 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION
- 8 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
**This line CANCELED on 16-OCT-2012**
- 9 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT
- 10 NS0170603 SQUARE  
FOOT  
9.00  
T103 - TONGUE/GROVESHEETING
- 11 NS0170604 SQUARE  
FOOT  
3.00  
T104 - T/GSHEETINGFURNOTHER
- 12 NS0170837 EACH 500.00  
T155 - HINGEDCURBPANEL
- 13 NS0170838 EACH 3586.00  
T156 - B/O,DISPBOX/CONDUITS
- 14 NS0170844 EACH 10450.00  
T159 - BREAKEXISTMANHOLE
- 15 NS0170863 EACH 3775.00  
T167 - INTERNALSEWERMATERIA  
COMPASS BPA 4041831, 4

Proprietary and Confidential Page 3 of 10

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)



**Contains Confidential Commercial Information**

16 NS0170927 CYLIND  
ER  
380.00  
T182 - FIBERGLASS CONDUIT  
17 NS0170951 CYLIND  
ER  
700.00  
T190 - STRUCTURALCONC<5CY  
18 NS0170961 EACH 2375.00  
T200 - LUMPSUMLAYOUTS  
19 NS0170962 EACH 2660.00  
T200A - T200 FOR PROTECTSTR  
20 NS0170975 HOUR 100.00  
T210 - DEWATERING  
21 NS0170979 EACH 750.00  
T211 - MOBILIZATION  
22 NS0170999 EACH 2375.00  
T215 - MOB WITHIN 4HRS  
23 NS0171008 EACH 16500.00  
T220 - MOB/DEMOBPILERIG  
24 NS0171009 EACH 1800.00  
T221 - F+IWOODPILES  
25 NS0171010 LINEAR  
FOOT  
45.00  
T222 - ADDWOODPILES  
26 NS0170651 EACH 1680.00  
T129TB - TEST BORING TO 30 FT  
27 NS0171022 SQUARE  
FOOT  
52.00  
T232 - F/I/REMVSTLSHEET  
28 NS0171023 POUND 3.75  
T233 - F/I/REMVSTLWHALERS  
29 NS0171024 CYLIND  
ER  
800.00  
T234 - REINFCONCMATW/FRM  
30 NS0171046 CYLIND  
ER  
550.00  
T2SCCO - CO2EMERGWOR  
31 NS0171047 CYLIND  
ER  
600.00  
T2SCCOA - T2SCCOPROTECTSTR  
32 NS0171136 LINEAR  
FOOT  
53.00  
T33A - BEVEL CUT CONC. BASE  
33 NS0171181 CYLIND  
ER  
430.00  
T43REV1 - EXCAMACHINEHAND  
34 NS0171182 CYLIND  
ER  
275.00  
T43REV2 - DEEPER/ADDTNEXCAV  
35 NS0171201 LINEAR

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FOOT

81.00

T46 - LINEARFT 3-0FTORLESS

36 NS0171207 LINEAR

FOOT

91.00

T46A - LF 3.0FTOR LESS LL14

37 NS0171220 LINEAR 14.15

COMPASS BPA 4041831, 4

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

FOOT

T46D - LFTCONDUIT>8DUCTS

38 NS0171236 LINEAR

FOOT

40.00

T46UPL - LFITEMSUNPAVAREA

39 NS0171241 LINEAR

FOOT

85.00

T47 - LINFT 3.1-5.0FT

40 NS0171247 LINEAR

FOOT

95.00

T47A - LINFT 3.1-5.0FT LL14

41 NS0171259 LINEAR

FOOT

159.00

T47L - LFTRENCH=>5FTDP

42 NS0171265 LINEAR

FOOT

179.00

T47LA - LFTRENCH=>5FTDPPROT

43 NS0171273 LINEAR

FOOT

99.00

T47LUPL - LFITEMSUNPAVAREA>5FT

44 NS0171286 LINEAR

FOOT

49.00

T47UPL - LFITEMSUNPAVAREA

45 NS0171303 CYLIND

ER

300.00

T50 - ROCK

46 NS0171307 CYLIND

ER

325.00

T51 - ROCK REMOVAL-DISPOSE

47 NS0171367 CYLIND

ER

63.00

T96 - CRUSHED STONE

48 NS0171378 EACH 3990.00

TFC1 - FCSTRUCT1SMALL

49 NS0171379 EACH 13750.00

TFC2 - FCSTRUCT2MEDIUM

**Contains Confidential Commercial Information**

50 NS0171380 EACH 21000.00  
TFC3 - FCSTRUCT3LARGE  
51 NS0171395 EACH 1805.00  
TPC1 - PCSTRUCT1SMALL  
52 NS0171396 EACH 8000.00  
TPC2 - PCSTRUCT2MEDIUM  
53 NS0171397 EACH 13750.00  
TPC3 - PCSTRUCT3LARGE  
54 NS0171400 EACH 3040.00  
TPCSL1 - PCSLTSTRUCTSMALL1  
55 NS0171401 EACH 12065.00  
TPCSL2 - PCSLTSTRUCTLARGE2  
Blanket Purchase Agreement 4041831,  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

Blanket Purchase Agreement 4041831,  
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**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARRMENT BY THE FEDERAL GOVERNMENT**

## **Contains Confidential Commercial Information**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

Blanket Purchase Agreement 4041831,

4

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition

## Contains Confidential Commercial Information

Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4041831,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

Appendix A.

337730

### **Gift Policy**

Blanket Purchase Agreement 4041831,

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**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or

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on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 10

CONTRACTOR : GIANFIA CORP

PURCHASE ORDER NO. : 4042970

BID COMPARISON:

\$1,221,997

\$1,323,300

\$1,325,000

\$1,577,000

\$1,892,000

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COMPASS Complex Service PO  
4042970, 2

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4042970**

Revision **2**

PO Approved Date **12/21/2012**

Revision Date **12/21/2012**

Buyer **Lisa Presotto**

Supplier: **GIANFIA CORP**

**COMPASS 179 BRADY AVE**

**HAWTHORNE, NY 10532**

**UNITED STATES**

Supplier

Contact:

**RUGGIERO RALPH**

**(914) 358-4601**

Key

ConEd

Contact:

**Ralph Schlichthernlein**

**914-376-3175**

**SCHLICHTHERNLEINR@CONED.COM**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10806 Immediate N/A**

**Notes:** Per Perfect Commerce Bid Event 37031, Gianfia Corp shall furnish supervision, labor, tools and materials to complete the scope of work for the upgrade of the Farrington PAR 12 moat.

The scope of work includes the upgrade of the Phase Angle Regulator 12 Moat at the Farragut Substation during the three-month period commencing November 2012. The scope of work includes the demolition and removal of the old moat walls including slabs, struts and footings, removal and disposal of sidewalk, old deluge house, and old gravel inside the moat and the installation of new reinforced concrete containment moat walls, slabs, struts and footings, a new fire-rated valve enclosure, a new 4" water line and an integrity test of the moat.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$1,142,000. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of the aforesaid expenditure limitation.

Price: \$1,142,000

This purchase order will be performed in accordance with & incorporates by reference the following:

COMPASS Complex Service PO

4042970, 2

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- All documents referenced in Con Edison's Bid Event 37031, Specifications CE-SS-3500-24523-11 and all associated documents, drawings and specifications.



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- Special Conditions dated 5/29/2012
- Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 06/10/2008
- EH&S Requirements
- Contractor's Compliance & Exception, Offer & Disclosure Forms dated 8/16/12 – No Exceptions

Taken

No contractor can perform any work before a hasp is approved by EH&S.

Reference Documents: Supplemental Construction Contract Requirements (SCCR).pdf

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price (USD)

Amount (USD)

1 Needed:

10/31/2012

1 EACH 1142000.0

0

1,142,000.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 57,100.00

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

10/31/2012

1 EACH 1142000.0

0

1,142,000.00

Ship To:

Use the ship-to address at the top of page 1

Total: **1,142,000.00 (USD)**

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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Appendix A - Required Clauses and Certifications

### STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

1.Definitions. The following terms as used herein shall have the meanings stated:

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

"Contractor" -The contractor who is a party to the Contract with Con Edison .

"Contract" -The contract between Con Edison and Contractor consisting of: (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or a Con Edison Standard Purchase Order ("purchase order"); (b) the relevant Con Edison request for quotation; (c) these Standard Terms and Conditions; and (d) any documents or portions thereof incorporated by reference in (a), (b) or (c) above, including, but not limited to, special conditions, specifications, performance requirements, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms on which quotations were requested by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not Standard Purchase Order 4042970, 2

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

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D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

4. Price and Payment.

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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but

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not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

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5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update Con Edison on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be Contractor's sole and exclusive remedy for such delay and Con Edison shall not be liable for any damages or additional costs incurred as a result of such delay.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and

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approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4042970, 2

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9.Contractor's Performance.

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule.

Details which are not specified in the Contract shall be performed by Contractor at no extra cost if

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such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:



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(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

### **13. Changes (Including Extra Work).**

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### **(i) Labor**

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(ii) Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus

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10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### **(iii) Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14. Labor.**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4042970, 2

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute

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is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4042970, 2

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work.

A.Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a T&M or other cost reimbursable basis.

B.Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C.For Work performed on a T&M basis, Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D.All work performed on a T&M basis shall be subject to Article 12 (Warranties) above.

E.The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F.Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a

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subcontractor) or government issued name and photo identification.

G.No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16.Claims.

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A.The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, no claims for damages or additional costs on account of delay shall be permitted.

B.For each claim for Non-Contract Work, as defined in (A)(i) of this Article, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Costs, as defined in (A)(ii) of this Article, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison.

(i)For each claim for Non-Contract Work, as defined in (A)(i) of this Article, these detailed records shall include:

- (a)The name, title, trade local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed; and
- (b)The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

(ii)For each claim for Increased Costs, as defined in (A)(ii) of this Article, these detailed records must include:

- (a)The date the Increased Costs were incurred;
- (b)The name, title, trade local, and number of the workers who performed the work whose costs were increased;
- (c)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; and
- (d)The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the

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actual project schedule, and other records and documents, if any, explaining the alleged cost Standard Purchase Order 4042970, 2

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available to Con Edison documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, shall be deemed a conclusive and binding determination by the Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

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18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Standard Purchase Order 4042970, 2

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor is required to assure that all vehicles, including those of Subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any Standard Purchase Order 4042970, 2

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fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving

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the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4042970, 2

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any

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approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25.Subcontracting.

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

C.If the Contract is on a cost-plus or T&M basis and is in an amount exceeding \$100,000 and Contractor enters into a subcontract with a Subcontractor to whom Contractor is subcontracting all or any portion of the performance to be rendered hereunder on a cost-plus or T&M basis in an amount exceeding \$5,000, immediately after Contractor enters into such subcontract, Contractor shall send a copy of such subcontract to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

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26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work  
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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Investigation and Audit. Contractor hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison or O&R or any federal, state or local government agency or authority relating to any aspect of this Contract or the Work, and the Contractor shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event the Contract now provides or in the future is revised to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and



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Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Standard Purchase Order 4042970, 2

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it

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has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4042970, 2

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4042970, 2

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage

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of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4042970, 2

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to

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continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison or O&R, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to the Contract (including, but not limited to, O&R). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with not less than the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Con Edison.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation diseases (with a limit of not less than \$1,000,000 per employee).

(iii) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 per occurrence and, for at least three (3) years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds with respect to the Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. The insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos

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Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, engineering, design, or other professional services, Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the duration of the Contract and for at least three years following final completion and acceptance of the Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

At least three days prior to commencing Work, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E of this Article and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

To the fullest extent allowed by law, Contractor agrees that this is an insured contract and that the insurance required herein is intended to cover each of Con Edison and O&R for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Standard Purchase Order 4042970, 2

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or

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accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness"), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39.Amendments. No revision or modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4042970, 2

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a

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cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### **42. Ownership of Documents and Materials; Ownership of Intangible Property**

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for O&R (hereinafter "O&R Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use O&R may make of them, shall be the sole and exclusive property of O&R. To the extent that any of the O&R Materials comprises copyrightable Standard Purchase Order 4042970, 2

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information

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concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

Standard Purchase Order 4042970, 2

Proprietary and Confidential Page 40 of 48

cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor under the Contract or any other contract between Con Edison and the Contractor or otherwise, any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor or otherwise, without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by



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law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any such article, section or paragraph.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York, applicable to agreements made and to be performed in that state. Standard Purchase Order 4042970, 2

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51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the state and federal courts situated in the City of New York or in Rockland or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

55. Enablement in the Procurement System. In the event Contractor is not presently enabled in the Procurement System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Contractor shall promptly become enabled.

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, representatives and Subcontractors have not engaged and will not

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engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such contracts, and in law and equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply Standard Purchase Order 4042970, 2

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with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to

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the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

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### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations,

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which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items Standard Purchase Order 4042970, 2

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(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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337858

### **Signatures**

**Buyer Supplier**

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(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 11

CONTRACTOR : POSILICO ENVIRONMENTAL INC

PURCHASE ORDER NO. : 4049009

BID COMPARISON:

\$11,760,545

\$20,444,056

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COMPASS Complex Service PO  
4049009, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4049009**

Revision **0**

PO Approved Date **10/19/2012**

Revision Date

Buyer **Lisa Presotto**

Supplier: **POSILICO ENVIRONMENTAL INC**

**1750 NEW HIGHWAY**

**FARMINGDALE, NY 11735**

**UNITED STATES**

Supplier

Contact:

**SPATAFORA THOMAS**

**(631) 390-5734**

Key

ConEd

Contact:

**Mark Rimler**

**718-204-4419**

**RIMLERM@CONED.COM**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**12902 Net 30**

**Notes:** Per Perfect Commerce Bid Event 37124, Posillico shall furnish supervision, labor, tools and materials to complete the scope of work for the Jet Grout Column Remediation of the former MGP site in Westchester, NY.

The scope of work includes the installation of a barrier wall using overlapping Jet Grout columns in order to remediate the gaps between the toe of the existing waterloo sheet pile wall and the top of the bedrock.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$9,816,600. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of the aforesaid expenditure limitation.

Price: \$9,816,600

This purchase order will be performed in accordance with & incorporates by reference the following:

- Bid event 37124 and all documents referenced therein, the Corrective Action Plan for site V00110-3 and all associated documents, drawings and specifications.
- Special Conditions dated 7/25/2012

COMPASS Complex Service PO

4049009, 0

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- Pre-Bid / Site Visit meeting minutes dated 8/9/2012 posted to the Event

- Bid Price Schedule submitted by Posillico dated 8/29/2012 (Base Bid Price Schedule and Unit Rate

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Option Price Schedule)

- Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 06/10/2008
- EH&S Requirements
- Contractor's Compliance & Exception, Offer and Disclosure forms dated 8/29/12 - no Exceptions were taken.
- Con Edison's Appendix A and Gift Policy

Reference Documents: Posillico Price Schedule Event 37124.pdf  
Supplemental Construction Contract Requirements (SCCR).pdf

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 Needed:

12/13/2012

1 EACH 9816600.0

0

9,816,600.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 490,830.00

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

12/13/2012

1 EACH 9816600.0

0

9,816,600.00

Ship To:

Use the ship-to address at the top of page 1

Total: **9,816,600.00 (USD)**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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Appendix A - Required Clauses and Certifications

### STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

1.Definitions. The following terms as used herein shall have the meanings stated:

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

"Contractor" -The contractor who is a party to the Contract with Con Edison .

"Contract" -The contract between Con Edison and Contractor consisting of: (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or a Con Edison Standard Purchase Order ("purchase order"); (b) the relevant Con Edison request for quotation; (c) these Standard Terms and Conditions; and (d) any documents or portions thereof incorporated by reference in (a), (b) or (c) above, including, but not limited to, special conditions, specifications, performance requirements, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms on which quotations were requested by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not Standard Purchase Order 4049009, 0

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional

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documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.  
D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4. Price and Payment.**

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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates,

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Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the

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representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update Con Edison on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be Contractor's sole and exclusive remedy for such delay and Con Edison shall not be liable for any damages or additional costs incurred as a result of such delay.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health

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Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4049009, 0

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9.Contractor's Performance.

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule.

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Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Standard Purchase Order 4049009, 0

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an

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applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

### **13. Changes (Including Extra Work).**

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### **(i) Labor**

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(ii) Materials**



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Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### **(iii) Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Standard Purchase Order 4049009, 0

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14. Labor.**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4049009, 0

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of

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this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4049009, 0

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. Time and Material and Cost Reimbursable Work.

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a T&M basis shall be subject to Article 12 (Warranties) above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and

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consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G.No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16.Claims.

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A.The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, no claims for damages or additional costs on account of delay shall be permitted.

B.For each claim for Non-Contract Work, as defined in (A)(i) of this Article, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Costs, as defined in (A)(ii) of this Article, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison.

(i)For each claim for Non-Contract Work, as defined in (A)(i) of this Article, these detailed records shall include:

(a)The name, title, trade local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed; and

(b)The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

(ii)For each claim for Increased Costs, as defined in (A)(ii) of this Article, these detailed records must include:

(a)The date the Increased Costs were incurred;

(b)The name, title, trade local, and number of the workers who performed the work whose costs were increased;

(c)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; and

(d)The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts,

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a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost Standard Purchase Order 4049009, 0

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available to Con Edison documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, shall be deemed a conclusive and binding determination by the Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to

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contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor is required to assure that all vehicles, including those of Subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any

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fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a

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vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance

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of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25.Subcontracting.

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

C.If the Contract is on a cost-plus or T&M basis and is in an amount exceeding \$100,000 and Contractor enters into a subcontract with a Subcontractor to whom Contractor is subcontracting all or any portion of the performance to be rendered hereunder on a cost-plus or T&M basis in an amount exceeding \$5,000, immediately after Contractor enters into such subcontract, Contractor shall send a copy of such subcontract to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

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26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work  
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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Investigation and Audit. Contractor hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison or O&R or any federal, state or local government agency or authority relating to any aspect of this Contract or the Work, and the Contractor shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event the Contract now provides or in the future is revised to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made

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under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con



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Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4049009, 0

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4049009, 0

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to

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Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4049009, 0

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense

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and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison or O&R, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to the Contract (including, but not limited to, O&R). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with not less than the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Con Edison.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation diseases (with a limit of not less than \$1,000,000 per employee).

(iii) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 per occurrence and, for at least three (3) years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds with respect to the Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. The insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos

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Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, engineering, design, or other professional services, Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the duration of the Contract and for at least three years following final completion and acceptance of the Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

At least three days prior to commencing Work, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E of this Article and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

To the fullest extent allowed by law, Contractor agrees that this is an insured contract and that the insurance required herein is intended to cover each of Con Edison and O&R for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison.

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph

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to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39.Amendments. No revision or modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4049009, 0

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts

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between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### **42. Ownership of Documents and Materials; Ownership of Intangible Property**

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for O&R (hereinafter "O&R Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use O&R may make of them, shall be the sole and exclusive property of O&R. To the extent that any of the O&R Materials comprises copyrightable Standard Purchase Order 4049009, 0

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto.

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Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

D.All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

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cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

43.Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44.Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45.Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

46.Set-Off. Con Edison shall have the right to set off against any sums due Contractor under the Contract or any other contract between Con Edison and the Contractor or otherwise, any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor or otherwise, without prejudice to the rights of the parties in respect of such claims.

47.Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be

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deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any such article, section or paragraph.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York, applicable to agreements made and to be performed in that state. Standard Purchase Order 4049009, 0

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51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the state and federal courts situated in the City of New York or in Rockland or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

55. Enablement in the Procurement System. In the event Contractor is not presently enabled in the Procurement System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Contractor shall promptly become enabled.

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and



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covenants that Contractor, its agents, employees, representatives and Subcontractors have not engaged and will not engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such contracts, and in law and equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply Standard Purchase Order 4049009, 0

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with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government.

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The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

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### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

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The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items Standard Purchase Order 4049009, 0

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(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

337730

### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

Standard Purchase Order 4049009, 0

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337858

**Signatures**

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**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 12

CONTRACTOR : HALLEN CONSTRUCTION CO INC

PURCHASE ORDER NO. : 4058289

BID COMPARISON:

\$83,381,671  
\$105,041,585  
\$126,407,449  
\$127,945,163

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COMPASS BPA 4058289, 3  
Proprietary and Confidential Page 1 of 55  
**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **COMPASS BPA**

Order **4058289**

Revision **3**

PO Approved Date **12/21/2012**

Revision Date **12/17/2012**

Current Buyer **Steven Sebastopoli**

Supplier: **HALLEN CONSTRUCTION CO INC**

**COMPASS PO BOX 9003**

**ISLAND PARK, NY 11558**

**UNITED STATES**

Supplier

Contact:

**AMBROSIO PASCALE**

**(516) 432-8300**

Key

ConEd

Contact:

**Steven Sebastopoli**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10710 Immediate DESTINATION**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/01/2012 11/30/2014 93,000,000.00**

**Notes:** MANHATTAN GAS TURNKEY – EAST SIDE

THE SCOPE OF WORK SHALL INCLUDE BUT NOT BE LIMITED TO: Furnish supervision, labor, material, tools and equipment for the removal of existing pavement, excavation, installation of plastic and steel gas services and mains, energizing gas services and mains, backfill, installation of base concrete and asphalt binder, parking coordination and full sidewalk restoration throughout the East Side of Manhattan for a two-year period.

NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$93,000,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS PURCHASE ORDER.

CON EDISON AUTHORIZED REPRESENTATIVES ARE:

COMPASS BPA 4058289, 3

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FELIM MCTAGUE 917/418-7218

Frank Kennedy 646/879-5834

AL SALGADO 917/807-9074

THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:

- CON EDISONS INVITATION TO BID EVENT# 37089 DATED June 27, 2012 AND ALL

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DOCUMENTS REFERENCED THEREIN.

- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008. -

CON EDISON'S SPECIAL CONDITIONS DATED June 19, 2012.

- CON EDISON'S GAS TRENCHING MANUAL DATED July 8, 2011.

- HALLENS SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED July 18, 2012. Hallen did not take any exceptions.

-CON EDISON'S CLARIFICATIONS/ADDENDUM DATED July 9, 14, 18 and 23, 2012.

A total of 4 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com.

PRICING TERMS:

=====

PRICING SHALL BE FIRM FOR YEAR 1 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 37089) WITH A 2ND YEAR ESCALATION MULTIPLIER. THE SECOND YEAR ESCALATION MULTIPLIER OF 1.036 (3.6%) SHALL BE APPLIED AGAINST THE FIRM YEAR 1 PRICING.

THE WEEKEND FACTOR SHALL REMAIN FIRM AND FIXED THROUGHOUT THE CONTRACT DURATION FOR THE FIRST YEAR AND SECOND YEAR AT 1.33.

HALLEN CONTACT:

=====

PAT AMBROSIO @ 516.432.8300

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL

FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

Revision 001 created to correct the Compass Requisition number for internal payment purposes. All terms, conditions and pricing remain unchanged as per the original Purchase Order.

COMPASS BPA 4058289, 3

Proprietary and Confidential Page 3 of 55

Revision 002 created to correct NS Numbers for internal compass payment purposes only. All terms, conditions and pricing remain unchanged as per the original Purchase Order and all previous modifications.

Revision 003 created to insert Compass Payment NS Numbers for internal compass payment purposes only. All terms, conditions and pricing remain unchanged as per the original Purchase Order and all previous modifications.

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

1 NS0169206 EACH 713.865

GT-11 - COLDROLLEDBEND

2 NS0168492 EACH 356.93

G-18 - ADDNBYPASMAINSERV

3 NS0168498 EACH 519.176

G-18CNG - SETUP,INSTMONCNGBYPS

4 NS0168614 LINEAR

FOOT

40.79

G-20 - ADDLPIPEWORK

5 NS0169233 EACH 2170.567

GT-18A - 2IN-4INCUTOUTTIEIN

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6 NS0169234 EACH 2856.118  
GT-18AS - 2IN-4INCUTOOTTIEIN  
7 NS0169235 EACH 3086.00  
GT-18B - 6IN-8INCUTOOTTIEIN  
8 NS0169236 EACH 3959.605  
GT-18BS - 6IN-8INCUTOOTTIEIN  
9 NS0169237 EACH 5018.00  
GT-18C - 10IN-12INCUTOOTTIEIN  
10 NS0169238 EACH 10968.343  
GT-18CS - 10IN-12INCUTOOTTIEIN  
11 NS0169239 EACH 20899.325  
GT-18D - 16IN-20INCUTOOTTIEIN  
12 NS0169240 EACH 25236.842  
11  
GT-18E - MAINCUTOUT24-30  
13 NS0169241 EACH 1447.04  
GT-19A - 2IN-4INMAINEXTEN  
14 NS0169242 EACH 2856.118  
GT-19AS - 2IN-4INMAINEXTEN  
15 NS0169243 EACH 1736.456  
GT-19B - 6IN-8INMAINEXTEN  
16 NS0169244 EACH 3808.166  
GT-19BS - 6IN-8INMAINEXTEN  
17 NS0169245 EACH 2384.129  
GT-19C - 10IN-12INMAINEXTEN  
18 NS0169246 EACH 7129.42  
GT-19CS - 10IN-12INMAINEXTEN  
19 NS0169247 EACH 8328.62  
GT-19DS - 16-20INMAINEXTENSION  
20 NS0169248 EACH 10098.376  
GT-19ES - 24-30INMAINEXTENSION  
21 NS0169250 LINEAR  
FOOT  
421.49  
GT-1AI1 - 1.25CTS-2IPS,<30FT  
22 NS0169253 LINEAR 355.47  
COMPASS BPA 4058289, 3  
Proprietary and Confidential Page 4 of 55  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
GT-1AII1 - 1.25CTS-2IPS,>30FT  
23 NS0169256 LINEAR  
FOOT  
502.77  
GT-1AII1S1 - 1.25ST-2ST,>30FT  
24 NS0169259 LINEAR  
FOOT  
538.06  
GT-1AIS1 - 1.25ST-2ST,<30FT  
25 NS0169262 LINEAR  
FOOT  
429.38  
GT-1BI1 - 3IPS-4IPS,<30FT  
26 NS0169265 LINEAR  
FOOT  
400.40  
GT-1BII1 - 3IPS-4IPS,>30FT



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27 NS0169268 LINEAR  
FOOT  
507.16  
GT-1BIIS1 - 3ST-4ST,>30FT  
28 NS0169271 LINEAR  
FOOT  
553.97  
GT-1BIS1 - 3ST-4ST,<30FT  
29 NS0169274 LINEAR  
FOOT  
560.10  
GT-1CI1 - 6IPS-8IPS,<30FT  
30 NS0169277 LINEAR  
FOOT  
501.36  
GT-1CII1 - 6IPS-8IPS,>30FT  
31 NS0169280 LINEAR  
FOOT  
600.97  
GT-1CIIS1 - 6ST-8ST,>30FT  
32 NS0169283 LINEAR  
FOOT  
680.83  
GT-1CIS1 - 6ST-8ST,<30FT  
33 NS0169289 LINEAR  
FOOT  
804.88  
GT-1DII1 - 10IPS-12IPS,>30FT  
34 NS0169295 LINEAR  
FOOT  
835.80  
GT-1DIS1 - 10ST-12ST,<30FT  
35 NS0169298 LINEAR  
FOOT  
590.85  
GT-1PAI1 - 1.25CTS-2IPS,<30FT  
36 NS0169301 LINEAR  
FOOT  
556.24  
GT-1PAII1 - 1.25CTS-2IPS,>30FT  
37 NS0169304 LINEAR  
FOOT  
661.97  
GT-1PAIIS1 - 1.25ST-2ST,>30FT  
38 NS0169307 LINEAR  
FOOT  
645.88  
GT-1PAIS1 - 1.25ST-2ST,<30FT  
39 NS0169310 LINEAR  
FOOT  
604.597  
GT-1PBI1 - 3IPS-4IPS,<30FT  
40 NS0169313 LINEAR  
FOOT  
581.537

COMPASS BPA 4058289, 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

**Contains Confidential Commercial Information**

Amount  
(USD)

GT-1PBII1 - 3IPS-4IPS,>30FT

41 NS0169316 LINEAR

FOOT

687.67

GT-1PBIS1 - 3ST-4ST,>30FT

42 NS0169319 LINEAR

FOOT

727.08

GT-1PBIS1 - 3ST-4ST,<30FT

43 NS0169322 LINEAR

FOOT

746.742

GT-1PCI1 - 6IPS-8IPS,<30FT

44 NS0169325 LINEAR

FOOT

684.972

GT-1PCII1 - 6IPS-8IPS,>30FT

45 NS0169328 LINEAR

FOOT

747.87

GT-1PCIIS1 - 6ST-8ST,>30FT

46 NS0169331 LINEAR

FOOT

834.72

GT-1PCIS1 - 6ST-8ST,<30FT

47 NS0169334 LINEAR

FOOT

768.094

GT-1PDI1 - 10IPS-12IPS,<30FT

48 NS0169337 LINEAR

FOOT

778.33

GT-1PDII1 - 10IPS-12IPS,>30FT

49 NS0169343 LINEAR

FOOT

983.65

GT-1PDIS1 - 10ST-12ST,<30FT

50 NS0169340 LINEAR

FOOT

972.45

GT-1PDIIS1 - 10ST-12ST,>30FT

51 NS0169351 EACH 356.932

GT-23A - 2-4IN CLAMP

52 NS0169352 EACH 571.09

GT-23B - 6-8IN CLAMP

53 NS0169353 EACH 713.865

GT-23C - 10-12IN CLAMP

54 NS0169357 LINEAR

FOOT

263.839

GT-26A - UP TO 4IN

55 NS0169361 LINEAR

FOOT

322.466

GT-26AS - UP TO 4IN

56 NS0169363 LINEAR

FOOT

**Contains Confidential Commercial Information**

266.96  
GT-26B - 6IN-8IN  
57 NS0169367 LINEAR  
FOOT

322.45  
GT-26BS - 6IN-8IN  
58 NS0169369 LINEAR  
FOOT

312.00  
GT-26C - 10IN-12IN  
59 NS0169373 LINEAR  
FOOT

450.045  
GT-26CS - 10IN-12IN  
COMPASS BPA 4058289, 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount  
(USD)  
60 NS0169375 LINEAR  
FOOT

705.791  
GT-26DS - 16IN-20IN  
61 NS0169377 LINEAR  
FOOT

349.97  
GT-26PA - UP TO 4IN  
62 NS0169378 LINEAR  
FOOT

429.489  
GT-26PAS - UP TO 4IN  
63 NS0169379 LINEAR  
FOOT

348.69  
GT-26PB - 6IN-8IN  
64 NS0169380 LINEAR  
FOOT

433.27  
GT-26PBS - 6IN-8IN  
65 NS0169381 LINEAR  
FOOT

406.0599  
GT-26PC - 10IN-12IN  
66 NS0169382 LINEAR  
FOOT

656.5675  
GT-26PCS - 10IN-12IN  
67 NS0169383 LINEAR  
FOOT

1027.52  
GT-26PDS - 16IN-20IN  
68 NS0169376 LINEAR  
FOOT

1080.34  
GT-26ES - 24-30INMAININSTALL  
69 NS0169384 LINEAR  
FOOT

1206.28  
GT-26PES - 24-30INMAININSTPROTD

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70 NS0169385 LINEAR  
FOOT  
94.665  
GT-27A - 2IN-4IN  
71 NS0169386 LINEAR  
FOOT  
106.659  
GT-27B - 6IN-8IN  
72 NS0169387 LINEAR  
FOOT  
131.63  
GT-27C - 12IN  
73 NS0168664 LINEAR  
FOOT  
49.43  
G-27BS - 6IN-8IN  
74 NS0168666 LINEAR  
FOOT  
79.098  
G-27CS - 12IN  
75 NS0168668 LINEAR  
FOOT  
136.38  
G-27DS - 16IN-20IN  
76 NS0168669 LINEAR  
FOOT  
130.48  
G-27ES - MAINOPENTRNH2430  
77 NS0169392 LINEAR  
FOOT  
52.64  
GT-29D - 4INMAININSERT  
78 NS0169393 LINEAR 63.15  
COMPASS BPA 4058289, 3  
Proprietary and Confidential Page 7 of 55  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
GT-29E - 6INMAININSERTNONPROT  
79 NS0169394 LINEAR  
FOOT  
70.24  
GT-29F - 8PEPLASMAININSTNONPR  
80 NS0169397 LINEAR  
FOOT  
341.10  
GT-2AI1 - 1CTS-2IPS,<30FT  
81 NS0169400 LINEAR  
FOOT  
357.92  
GT-2AII1 - 1CTS-2IPS,>30FT  
82 NS0169417 LINEAR  
FOOT  
380.69  
GT-2PAI1 - 1CTS-2IPS,<30FT  
83 NS0169420 LINEAR  
FOOT  
550.36

**Contains Confidential Commercial Information**

GT-2PAH1 - 1CTS-2IPS,>30FT

84 NS0169405 LINEAR

FOOT

408.22

GT-2BI1 - 3IPS-4IPS,<30FT

85 NS0169408 LINEAR

FOOT

376.27

GT-2BII1 - 3IPS-4IPS,>30FT

86 NS0168721 LINEAR

FOOT

670.64

G-2PBI1 - 3IPS-4IPS,<30FT

87 NS0168724 LINEAR

FOOT

641.42

G-2PBII1 - 3IPS-4IPS,>30FT

88 NS0168697 LINEAR

FOOT

420.49

G-2BIS1 - 2ST-4ST,<30FT

89 NS0169411 LINEAR

FOOT

376.52

GT-2BIIS1 - 2ST-4ST,>30FT

90 NS0168730 LINEAR

FOOT

653.20

G-2PBIS1 - 2ST-4ST,<30FT

91 NS0169429 LINEAR

FOOT

676.67

GT-2PBIIS1 - 2ST-4ST,>30FT

92 NS0168700 LINEAR

FOOT

500.00

G-2CI1 - 6IPS<30HPPLASTMANH

93 NS0168703 LINEAR

FOOT

467.80

G-2CII1 - 6IPS>30HPPLASTMANH

94 NS0168706 LINEAR

FOOT

489.54

G-2CIIS1 - 6IPS>30HPSTLMANH

95 NS0168709 LINEAR

FOOT

526.23

G-2CIS1 - 6IPS<30HPSTLMANH

96 NS0168733 LINEAR

FOOT

716.83

COMPASS BPA 4058289, 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

G-2PCI1 - 6IPS<30HPPLASTMANH

97 NS0168735 LINEAR

**Contains Confidential Commercial Information**

FOOT  
793.55  
G-2PCII1 - 6IPS>30HPPLASTMANH  
98 NS0168737 LINEAR  
FOOT  
761.38  
G-2PCIIS1 - 6IPS>30HPSTLMANH  
99 NS0168739 LINEAR  
FOOT  
803.70  
G-2PCIS1 - 6IPS<30HPSTLMANH  
100 NS0168749 EACH 4102.31  
G-31PSTAS - 2STLSERVXFERPROTECT  
101 NS0168750 EACH 4731.17  
G-31PSTBS - 3-4STLSERVXFERPROTEC  
102 NS0169437 EACH 1425.33  
GT-31A - 2IN+<SERVXFER  
103 NS0169438 EACH 1959.60  
GT-31AS - 2IN+<SERVXFER  
104 NS0169439 EACH 2068.41  
GT-31B - 3IN-4INSERVXFER  
105 NS0169440 EACH 2818.71  
GT-31BS - 3IN-4INSERVXFER  
106 NS0169441 EACH 4136.98  
GT-31C - 6IN-8INSERVXFER  
107 NS0169442 EACH 7066.06  
GT-31CS - 6IN-8INSERVXFER  
108 NS0169444 EACH 9979.45  
GT-31DS - 10IN-12INSERVXFER  
109 NS0168757 EACH 1963.31  
G-31STA - SERVXFER2IN<PLASTCOP  
110 NS0168759 EACH 3349.7221  
99  
G-31STB - SERVXFER3-4INPLASCOP  
111 NS0168761 EACH 4750.12  
G-31STC - SERVXFER6-8INPLASCOP  
112 NS0168762 EACH 6132.20  
G-31STCS - 6-8STLSVXFERNONPROTE  
113 NS0168763 EACH 6520.76  
G-31STD - SERXFR10-12INPLASCOP  
114 NS0168764 EACH 10638.01  
G-31STDS - 1012STLSVXFERNONPROT  
115 NS0169451 EACH 2707.048  
GT-35A - UP TO 8IN SLEEVE  
116 NS0169452 EACH 5414.096  
GT-35B - 10IN-16INSLEEVE  
117 NS0169453 EACH 9947.575  
GT-35C - >16IN SLEEVE  
118 NS0169458 EACH 1083.76  
GT-36AA - COREDR2-4INPOESLEEV  
119 NS0169459 EACH 1534.96  
GT-36AB - COREDR6-8INPOESLEEV  
120 NS0169460 EACH 3191.209  
GT-36B - 10+>COREDRILL  
121 NS0169467 EACH 4325.43  
GT-3AI1 - 1CTS-1.25CTS,<30FT  
COMPASS BPA 4058289, 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

**Contains Confidential Commercial Information**

(USD)  
Amount  
(USD)  
122 NS0169470 EACH 4119.87  
GT-3AII1 - 1CTS-1.25CTS,>30FT  
123 NS0169473 EACH 4361.45  
GT-3BI1 - 2IPS,<30FT  
124 NS0169476 EACH 4361.45  
GT-3BII1 - 2IPS,>30FT  
125 NS0169485 EACH 4076.11  
GT-3DI1 - 1CTS-1.25CTS,<30FT  
126 NS0169491 EACH 5480.80  
GT-3PAI1 - 1CTS-1.25CTS,<30FT  
127 NS0168813 EACH 4559.55  
G-3PAII1 - 1CTS-1.25CTS,>30FT  
128 NS0168816 EACH 5517.16  
G-3PBI1 - 2IPS,<30FT  
129 NS0169500 EACH 5867.78  
GT-3PBII1 - 2IPS,>30FT  
130 NS0169522 EACH 414.00  
GT-42B - OFFSET-6IN-8IN  
131 NS0169523 EACH 551.42  
GT-42C - OFFSET-10IN12IN  
132 NS0169524 EACH 987.65  
GT-42D - WELDOFFSETUPTO4  
133 NS0169525 EACH 1580.25  
GT-42E - WELDOFFSET6-8IN  
134 NS0169526 EACH 3196.585  
GT-42F - WELDOFFSET10-12IN  
135 NS0169527 CYLIND  
ER  
637.528  
GT-43A - EXCAVRDWYNONPROT  
136 NS0169531 CYLIND  
ER  
914.40  
GT-43PA - EXCAVRDWYPROTECTED  
137 NS0169568 EACH 6152.40  
GT-4PBI1 - 1CTS-1.25IPS,<30FT  
138 NS0169619 EACH 366.67  
GT-5AI1 - 1CTS-1.25CTS,<30FT  
139 NS0169631 EACH 3632.46  
GT-5BI1 - 2IPS,<30FT  
140 NS0169634 EACH 733.35  
GT-5BII1 - 2IPS,>30FT  
141 NS0169643 EACH 733.35  
GT-5CI1 - 3IPS-4IPS,<30FT  
142 NS0169646 EACH 3716.92  
GT-5CII1 - 3IPS-4IPS,>30FT  
143 NS0169649 EACH 5971.41  
GT-5CIS1 - 3IPS-4IPS,>30FT  
144 NS0169664 EACH 5799.30  
GT-6AIS1 - 0.5CTS,>30FT  
145 NS0169655 SQUARE  
FOOT  
17.32  
GT-60 - T113W/RECESSPLTS  
146 NS0169656 SQUARE  
FOOT

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18.99

GT-61 - T112W/RECESSPLTS

147 NS0169657 SQUARE 20.17

COMPASS BPA 4058289, 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

FOOT

GT-62 - RECESSPLATELFITEM

148 NS0169703 EACH 493.826

GT-75 - WELD2INTAPTEE

149 NS0169704 EACH 658.439

GT-76 - TAPTEE3IN-4IN

150 NS0169705 EACH 1975.318

GT-77 - TAPTEE6IN-8IN

151 NS0169706 EACH 987.60

GT-78 - TAPTEE3IN-4IN

152 NS0169707 EACH 2194.798

GT-79 - TAPTEE6IN-8IN

153 NS0169714 LINEAR

FOOT

825.96

GT-89A - GRINDRAZORBACKRIB

154 NS0169715 LINEAR

FOOT

788.407

GT-89B - GRINDSPIRALSTYLERIB

155 NS0169716 EACH 495.114

GT-8A - 2-4CUTOUT

156 NS0169718 EACH 618.88

GT-8B - 6-8CUTOUT

157 NS0169720 EACH 990.228

GT-8C - 10-12CUTOUT

158 NS0169721 EACH 1326.19

GT-8D - WINCUTOUT16-20

159 NS0169722 EACH 3833.027

GT-8E - WINCUTOUT24-36

160 NS0169723 EACH 404.846

GT-90A - WELDPIPEUPTO4IN

161 NS0169724 EACH 640.50

GT-90B - WELDPIPE6-8IN

162 NS0169725 EACH 1198.28

GT-90C - WELDPIPE12-16IN

163 NS0169726 EACH 2932.775

GT-90D - WELDPIPE20IN+>

164 NS0169727 EACH 134.725

GT-91A - FUSEPIPEUPTO4IN

165 NS0169728 EACH 161.67

GT-91B - FUSEPIPE6-8IN

166 NS0169729 EACH 1165.32

GT-91C - FUSEPIPE10-12IN

167 NS0169734 EACH 2385.75

GT-9A - 0.5CTS-2IPS

168 NS0169735 EACH 3795.96

GT-9B - 3IPS-4IPS

169 NS0169738 EACH 3484.10

GT-9PA - 0.5CTS-2IPS

170 NS0169739 EACH 3690.59



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GT-9PB - 3IPS-4IPS  
171 NS0169204 EACH 752.53  
GT-10A - 0.5CTS-2IPS  
172 NS0169205 EACH 1003.34  
GT-10B - 3IPS-4IPS  
173 NS0170601 SQUARE 6.39  
COMPASS BPA 4058289, 3  
Proprietary and Confidential Page 11 of 55  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
T101 - SOLID SHEETING  
174 NS0170608 LINEAR  
FOOT  
52.535  
T11 - LL14CONCRETEBASE  
175 NS0170609 SQUARE  
FOOT  
7.685  
T110 - VEHICULAR PLATES  
176 NS0170611 SQUARE  
FOOT  
8.42  
T112 - STRAPWELDEDPLATES  
177 NS0170612 SQUARE  
FOOT  
16.625  
T113 - STRAPWELDBEAMSPLATES  
178 NS0170614 SQUARE  
FOOT  
6.846  
T114 - PLATERENTALMAINT.  
179 NS0170632 EACH 455.35  
T125 - TESTPIT 0.1-4.0 CY  
180 NS0170641 EACH 910.70  
T126 - TESTPIT 4.1-8.0 CY  
181 NS0170643 EACH 1821.407  
T127 - TESTPIT 8.1-15.0 CY  
182 NS0170763 EACH 5409.28  
T146 - FC B3-6,S,TS BOX  
183 NS0170838 EACH 568.30  
T156 - B/O,DISPBOX/CONDUITS  
184 NS0170919 LINEAR  
FOOT  
4.91  
T180 - INST 2"-5"CONDUIT  
185 NS0170932 LINEAR  
FOOT  
6.546  
T183 - INST4"-5"SPLITCONDUI  
186 NS0170960 CYLIND  
ER  
198.073  
T2 - STREET/BASE/BRK  
187 NS0170979 EACH 636.056  
T211 - MOBILIZATION  
188 NS0171123 CYLIND  
ER

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469.22  
T31 - BINDER BASE  
189 NS0171129 CYLIND  
ER  
428.99  
T32 - CONCRETE BASE  
190 NS0171136 LINEAR  
FOOT  
110.526  
T33A - BEVEL CUT CONC. BASE  
191 NS0171049 CYLIND  
ER  
301.016  
T3 - BLOCKSTRBASEBRKREST  
192 NS0171143 CYLIND  
ER  
1488.62  
T3R - BLOCKSTRBASEBRK  
193 NS0170732 LINEAR  
FOOT  
27.21  
COMPASS BPA 4058289, 3  
Proprietary and Confidential Page 12 of 55  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
T13RC - SAWCUT,REM,DESPASPH  
194 NS0171172 CYLIND  
ER  
561.95  
T42 - EXCA100 HAND<10FT  
195 NS0171224 LINEAR  
FOOT  
175.70  
T46L - LFTRENCH0-4 11"DP  
196 NS0171225 LINEAR  
FOOT  
237.49  
T46LA - LFTRENCH0-4 11"DPPRO  
197 NS0171303 CYLIND  
ER  
654.97  
T50 - ROCK  
198 NS0171314 CYLIND  
ER  
416.85  
T53 - INTACT MASONRY  
199 NS0171316 CYLIND  
ER  
777.375  
T54 - ENCLOSURES  
200 NS0171317 CYLIND  
ER  
921.58078  
93  
T55 - CARTROLLEYTRACKS  
201 NS0171319 CYLIND  
ER  
515.0156

**Contains Confidential Commercial Information**

T56 - CONCENCASSTLPIPE  
202 NS0171331 LINEAR  
FOOT  
7.141  
T70 - ABANDELECTSTDUCT  
203 NS0171332 LINEAR  
FOOT  
59.36  
T70A - SAMEAST708INPIPE  
204 NS0171333 LINEAR  
FOOT  
89.05  
T70B - LIKET70PIPE>16IN  
205 NS0171344 CYLIND  
ER  
1359.348  
T7R - BRKRESTSDWKDRIV  
206 NS0171329 CYLIND  
ER  
951.52  
T6R - HEAVYREINCONRDBRKRES  
207 NS0171349 EACH 109.058  
T80 - TEST EXISTING FACS  
208 NS0171360 CYLIND  
ER  
95.054  
T92 - SAND BACKFILL  
209 NS0171368 CYLIND  
ER  
79.59  
T97 - LINFTBACKFILL  
210 NS0170975 HOUR 185.588  
T210 - DEWATERING  
211 NS0171145 CYLIND  
ER  
1608.735  
T400 - FURN,INSTALPAVNOEXCV  
212 NS0171148 CYLIND  
ER  
1876.868  
COMPASS BPA 4058289, 3  
Proprietary and Confidential Page 13 of 55  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
T401 - EXCRMVMACINSTPREMPAV  
213 NS0167712 LINEAR  
FOOT  
8.04  
424 - TRAF CONT STRIP  
214 NS0167713 LINEAR  
FOOT  
16.09  
425 - TRAF STRIP >6IN  
215 NS0171292 SQUARE  
YARD  
100.549  
T480 - MILL+PAVE<=350SY  
216 NS0168620 EACH 585.04

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G-24A - 4-8JTENCAP  
217 NS0168621 EACH 813.34  
G-24B - 10-12JTENCAP  
218 NS0168622 EACH 1562.34  
G-24C - ENCAP16-20INJT  
219 NS0168623 EACH 1655.267  
G-24D - ENCAP24INJOINT  
220 NS0168624 EACH 2101.25  
G-24E - ENCAP30INJOINT  
221 NS0168625 EACH 2229.93  
G-24F - ENCAP36INJOINT  
222 NS0170734 EACH 168.42  
T14 - COMPACTION TEST  
223 NS0171059 HOUR 87.106  
T301 - LABORER/DRILLRUNNER  
224 NS0171066 HOUR 38.91  
T301D - LAB/DRILLRNROTDIFF  
225 NS0171070 HOUR 134.64  
T301X - LABORERDRILLRNRWKND  
226 NS0171071 HOUR 135.638  
T302 - LAB FOREMAN W/TRUCK  
227 NS0171072 HOUR 25.53  
T302D - LABFOREMW/TRK OTDIFF  
228 NS0171076 HOUR 164.52  
T302X - LABFOREMW/TRUCKWKND  
229 NS0171077 HOUR 215.276  
T303 - TEAMSTER, W/DUMPTRUCK  
230 NS0171079 HOUR 12.04  
T303ND - TEAM, W/DMPTRKNGTDIFF  
231 NS0171078 HOUR 26.67  
T303D - TEAM, W/DMPTRKOTDIFF  
232 NS0171083 HOUR 246.95  
T303X - TEAMSTERW/DMPTRKWKND  
233 NS0171084 HOUR 75.14  
T304 - COMPR/JHAMMERS  
234 NS0171086 HOUR 166.55  
T304M - ITEM304W/COMPRENDR  
235 NS0171088 HOUR 18.47  
T304MND - T304W/NIGHTDIFF  
236 NS0171087 HOUR 70.96  
T304MD - T304W/OTDIFF  
237 NS0171094 HOUR 247.98  
T304X - COMP/JACKHANNERWKND  
238 NS0171095 HOUR 239.67  
COMPASS BPA 4058289, 3  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
T305 - OPENG W/BACKHOE  
239 NS0171107 HOUR 24.41  
T305ND - T305 W/NGT DIFF  
240 NS0171106 HOUR 92.22  
T305D - T305 W/OT DIFF  
241 NS0171112 HOUR 205.35  
T305X - OPENGRW/BACKHOEWKND  
242 NS0171096 HOUR 156.85  
T305A - OPERENGRWELDER  
243 NS0171099 HOUR 23.98

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T305AND - T305AW/NGTDIFF  
244 NS0171097 HOUR 93.41  
T305AD - T305AW/OT DIFF  
245 NS0171100 HOUR 262.65  
T305AX - OPERENGRWELDERWKND  
246 NS0171101 HOUR 115.72  
T305B - OPERENGRMAINTMAN  
247 NS0171104 HOUR 24.41  
T305BND - T305BW/NGTDIFF  
248 NS0171102 HOUR 115.72  
T305BD - T305BW/OT DIFF  
249 NS0171105 HOUR 219.79  
T305BX - OPENGRMAINTMANWKND  
250 NS0171113 HOUR 138.43  
T306 - TIMBERMAN/TOOLS/TRAN  
251 NS0171115 HOUR 15.939  
T306ND - T306W/NGT DIFF  
252 NS0171114 HOUR 28.49  
T306D - T306W/OT DIFF  
253 NS0171119 HOUR 171.436  
T306X - TIMBMN/TOOL/TRANWKND  
254 NS0187804 LINEAR  
FOOT  
68.55  
G-29DS - StlMainInsert4in  
255 NS0187805 LINEAR  
FOOT  
92.34  
G-29ES - StlMainInsert6-8in  
256 NS0187806 LINEAR  
FOOT  
118.70  
G-29FS - StlMainInsert10-12in  
257 NS0187807 EACH 4354.70  
GT-9PCM - CutCapExcPro2-4in  
259 NS0187809 EACH 8245.12  
GT-9PEM - CutCapExcPro10-12in  
261 NS0187811 EACH 16324.29  
GT-9PGM - CutCapExcPro24-30in  
263 NS0187813 EACH 4339.49  
GT-9DM - CutCapExcNoP6-8in  
266 NS0187816 EACH 12780.00  
GT-9GM - CutCapExcNoP24-30in  
268 NS0187818 EACH 2060.00  
GT-10DM - CutCapNoExc6-8in  
269 NS0187819 EACH 5352.00  
GT-10EM - CutCapNoExc10-12in  
270 NS0187820 EACH 10235.29  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
GT-10FM - CutCapNoExc16-20in  
271 NS0187821 EACH 13311.76  
GT-10GM - CutCapNoExc24-30in  
272 NS0188231 EACH 5043.48  
GT-9PDM - CutCapExcPro6-8in  
273 NS0188232 EACH 12555.71

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GT-9PFM-CutCapExcPro16-20  
274 NS0188233 EACH 3515.15  
GT-9CM - CutCapExcNoP2-4in  
275 NS0188234 EACH 6227.06  
GT-9EM - CutCapExcNoP10-12in  
276 NS0188235 EACH 9174.67  
GT-9FM - CutCapExcNoP16-20in  
277 NS0188236 EACH 1584.00  
GT-10CM - CutCapNoExc2-4in  
278 NS0169972 EACH 1.00  
MATINV - MATERIALINVOICE  
279 NS0170141 EACH 10.00  
PARTIAL - PATRIALPAYMENT  
280 NS0170248 EACH 1.00  
PREMIUM - PREMDIFFPAYMENT  
281 NS0170249 EACH 10.00  
PROGRESS - PROGRESSPAYMENT  
282 NS0171140 EACH 1.00  
T350 - TIMEEQPPAYMENT  
283 NS0168393 EACH 1.00  
BILCORRECT - BILL CORRECTION  
284 NS0168423 EACH 1.00  
EQPINV - EQUIPMENTINVOICE  
285 NS0168451 EACH 1.00  
FINECORRCT - FINENOVCORRECTION  
286 NS0170598 EACH 1.00  
SUBINV - SUBCONTRACTINVOICE  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

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The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that

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any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4058289,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in



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such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Terms and Conditions**

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**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

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December 7, 2010

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1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

Con Edison-Consolidated Edison Company of New York, Inc.

Contractor-The contractor named on the face of the Con Edison purchase order.

Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.

Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### 3. Specifications, Plans, and Drawings

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

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B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4. Price and Payment**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4058289,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the

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case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4058289,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule.

Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4058289,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially

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approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

### 7.Safeguards in Work

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4058289,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F.Contractors shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison

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against any liability resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### 9.Contractors Performance

A.Contractors shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B.When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C.Contractors shall perform the Work in accordance with the following:

(a)All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies,

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other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4058289,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4058289,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge

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Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### 13. Changes (Including Extra Work)

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

#### (a) Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### (b) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

#### (c) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor

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deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available.

Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any



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former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### **15. Time and Material and Cost Reimbursable Work**

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative. If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4058289,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act,

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and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Blanket Purchase Agreement 4058289,

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and  
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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4058289,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a

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conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out

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of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. **Vehicle Spills** Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. **Maintenance of Work Site.** Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. **Subsurface Conditions Found Different.** Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23. **Inspection and Tests and Correction of Defects**

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment,

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment,

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material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### 25.Subcontracting

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the

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correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing.

Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If

requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and

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such bonds shall so provide.

### **31. Other Contractors**

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### **33. Termination for Convenience**

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4058289,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to

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unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law



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limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4058289,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4058289,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out

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of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4058289,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether

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or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4058289,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4058289,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and

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Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4058289,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum

A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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Appendix A dated July 2007 A1 to A3

**Gift Policy**

**Gift Policy and Unlawful Conduct:**Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or

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others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

Blanket Purchase Agreement 4058289,

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337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 13

CONTRACTOR : SAFEWAY CONSTRUCTION ENTERPRISES  
INC

PURCHASE ORDER NO. : 4058594

BID COMPARISON :

\$87,353,2522

\$95,269,146

\$112,290,411

\$116,519,532

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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**  
Type **COMPASS BPA**  
Order **4058594**  
Revision **2**  
PO Approved Date **12/21/2012**  
Revision Date **12/12/2012**  
Current Buyer **Steven Sebastopoli**  
Supplier: **SAFeway CONSTRUCTION ENTERPRISES INC**  
**COMPASS 54-60 44TH ST**  
**MASPETH, NY 11378**  
**UNITED STATES**  
Supplier  
Contact:  
**DIRE GUIDO**  
**7183496645**  
Key  
ConEd  
Contact:  
**Steven Sebastopoli**  
Ship To: **4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**  
Bill To: **PO Box 799**  
**Cooper Station**  
**New York, NY 10276-0799**  
**UNITED STATES**  
Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via  
**8880 Immediate DESTINATION**  
Effective Start Date Effective End Date Amount Agreed (USD)  
**12/01/2012 11/30/2014 74,900,000.00**

**Notes:** MANHATTAN GAS TURNKEY – WEST SIDE

THE SCOPE OF WORK SHALL INCLUDE BUT NOT BE LIMITED TO: Furnish supervision, labor, material, tools and equipment for the removal of existing pavement, excavation, installation of plastic and steel gas services and mains, energizing gas services and mains, backfill, installation of base concrete and asphalt binder, parking coordination and full sidewalk restoration throughout the WEST Side of Manhattan for a two-year period.

NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$74,900,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS PURCHASE ORDER.

COMPASS BPA 4058594, 2

Proprietary and Confidential Page 2 of 57

CON EDISON AUTHORIZED REPRESENTATIVES ARE:

FELIM MCTAGUE 917/418-7218

Frank Kennedy 646/879-5834

AL SALGADO 917/807-9074

THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:

- CON EDISONS INVITATION TO BID EVENT# 37090 DATED June 27, 2012 AND



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ALL DOCUMENTS REFERENCED THEREIN.

- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008
- CON EDISON'S SPECIAL CONDITIONS DATED June 19, 2012.
- CON EDISON'S GAS TRENCHING MANUAL DATED July 8, 2011.
- Safeway's SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED July 11, 2012. Safeway did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED July 9, 14, 18 and 23, 2012.

A total of 4 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com.

PRICING TERMS:

=====

PRICING SHALL BE FIRM FOR YEAR 1 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 37090) WITH A 2ND YEAR ESCALATION MULTIPLIER. THE SECOND YEAR ESCALATION MULTIPLIER OF 1.02 (2.0%) SHALL BE APPLIED AGAINST THE FIRM YEAR 1 PRICING.

THE WEEKEND FACTOR SHALL REMAIN FIRM AND FIXED THROUGHOUT THE CONTRACT DURATION FOR THE FIRST YEAR AND SECOND YEAR AT 1.28.

Safeway CONTACT:

=====

GUIDO DIRE @ 718-349-6645

Item 18CNG- G-18CNG -

SETUP,INSTMONCNGBYPS

will be paid on Time and Equipment.

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF COMPASS BPA 4058594, 2

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ALL

FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

Revision 001 created to correct the Compass Requisition number for internal payment purposes. All terms, conditions and pricing remain unchanged as per the original Purchase Order.

Revision 002 created to correct NS Numbers and insert Compass NS Numbers for internal compass payment purposes only. All terms, conditions and pricing remain unchanged as per the original Purchase Order and all previous modifications.

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount (USD)

1 NS0169206 EACH 500.00

GT-11 - COLDROLLEDBEND

2 NS0168492 EACH 700.00

G-18 - ADDNBYPASMAINSERV

3 NS0168498 EACH .00

G-18CNG - SETUP,INSTMONCNGBYPS

4 NS0168614 LINEAR

FOOT

31.00

G-20 - ADDLPIPEWORK

5 NS0169233 EACH 4000.90

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GT-18A - 2IN-4INCUTOUTTIEIN  
6 NS0169234 EACH 3870.00  
GT-18AS - 2IN-4INCUTOUTTIEIN  
7 NS0169235 EACH 6400.50  
GT-18B - 6IN-8INCUTOUTTIEIN  
8 NS0169236 EACH 7200.00  
GT-18BS - 6IN-8INCUTOUTTIEIN  
9 NS0169237 EACH 8400.00  
GT-18C - 10IN-12INCUTOUTTIEIN  
10 NS0169238 EACH 10000.00  
GT-18CS - 10IN-12INCUTOUTTIEIN  
11 NS0169239 EACH 18000.00  
GT-18D - 16IN-20INCUTOUTTIEIN  
12 NS0169240 EACH 24000.00  
GT-18E - MAINCUTOUT24-30  
13 NS0169241 EACH 2400.00  
GT-19A - 2IN-4INMAINEXTEN  
14 NS0169242 EACH 2900.00  
GT-19AS - 2IN-4INMAINEXTEN  
15 NS0169243 EACH 3000.00  
GT-19B - 6IN-8INMAINEXTEN  
16 NS0169244 EACH 4000.00  
GT-19BS - 6IN-8INMAINEXTEN  
17 NS0169245 EACH 4800.00  
GT-19C - 10IN-12INMAINEXTEN  
18 NS0169246 EACH 5400.00  
GT-19CS - 10IN-12INMAINEXTEN  
19 NS0169247 EACH 14100.00  
GT-19DS - 16-20INMAINEXTENSION  
20 NS0169248 EACH 18400.00  
GT-19ES - 24-30INMAINEXTENSION  
21 NS0169250 LINEAR  
FOOT  
255.00  
GT-1AI1 - 1.25CTS-2IPS,<30FT  
COMPASS BPA 4058594, 2  
Proprietary and Confidential Page 4 of 57  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
22 NS0169253 LINEAR  
FOOT  
251.00  
GT-1AII1 - 1.25CTS-2IPS,>30FT  
23 NS0169256 LINEAR  
FOOT  
320.00  
GT-1AII1S1 - 1.25ST-2ST,>30FT  
24 NS0169259 LINEAR  
FOOT  
340.00  
GT-1AIS1 - 1.25ST-2ST,<30FT  
25 NS0169262 LINEAR  
FOOT  
340.00  
GT-1BI1 - 3IPS-4IPS,<30FT  
26 NS0169265 LINEAR  
FOOT  
315.00

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GT-1BIII - 3IPS-4IPS,>30FT  
27 NS0169268 LINEAR  
FOOT  
380.00  
GT-1BIIS1 - 3ST-4ST,>30FT  
28 NS0169271 LINEAR  
FOOT  
400.00  
GT-1BIS1 - 3ST-4ST,<30FT  
29 NS0169274 LINEAR  
FOOT  
450.00  
GT-1CI1 - 6IPS-8IPS,<30FT  
30 NS0169277 LINEAR  
FOOT  
420.00  
GT-1CII1 - 6IPS-8IPS,>30FT  
31 NS0169280 LINEAR  
FOOT  
480.00  
GT-1CIIS1 - 6ST-8ST,>30FT  
32 NS0169283 LINEAR  
FOOT  
520.00  
GT-1CIS1 - 6ST-8ST,<30FT  
33 NS0169289 LINEAR  
FOOT  
860.00  
GT-1DII1 - 10IPS-12IPS,>30FT  
34 NS0169295 LINEAR  
FOOT  
870.00  
GT-1DIS1 - 10ST-12ST,<30FT  
35 NS0169298 LINEAR  
FOOT  
400.00  
GT-1PAI1 - 1.25CTS-2IPS,<30FT  
36 NS0169301 LINEAR  
FOOT  
395.00  
GT-1PAII1 - 1.25CTS-2IPS,>30FT  
37 NS0169304 LINEAR  
FOOT  
468.00  
GT-1PAIIS1 - 1.25ST-2ST,>30FT  
38 NS0169307 LINEAR  
FOOT  
475.00  
GT-1PAIS1 - 1.25ST-2ST,<30FT  
39 NS0169310 LINEAR  
FOOT  
450.00  
GT-1PBI1 - 3IPS-4IPS,<30FT  
40 NS0169313 LINEAR 435.00  
COMPASS BPA 4058594, 2

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)

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FOOT  
GT-1PBII1 - 3IPS-4IPS,>30FT  
41 NS0169316 LINEAR  
FOOT  
485.00  
GT-1PBIIS1 - 3ST-4ST,>30FT  
42 NS0169319 LINEAR  
FOOT  
490.00  
GT-1PBIS1 - 3ST-4ST,<30FT  
43 NS0169322 LINEAR  
FOOT  
500.00  
GT-1PCI1 - 6IPS-8IPS,<30FT  
44 NS0169325 LINEAR  
FOOT  
485.00  
GT-1PCII1 - 6IPS-8IPS,>30FT  
45 NS0169328 LINEAR  
FOOT  
565.00  
GT-1PCIIS1 - 6ST-8ST,>30FT  
46 NS0169331 LINEAR  
FOOT  
595.00  
GT-1PCIS1 - 6ST-8ST,<30FT  
47 NS0169334 LINEAR  
FOOT  
845.00  
GT-1PDI1 - 10IPS-12IPS,<30FT  
48 NS0169337 LINEAR  
FOOT  
830.00  
GT-1PDII1 - 10IPS-12IPS,>30FT  
49 NS0169343 LINEAR  
FOOT  
950.00  
GT-1PDIS1 - 10ST-12ST,<30FT  
50 NS0169340 LINEAR  
FOOT  
900.00  
GT-1PDIIS1 - 10ST-12ST,>30FT  
51 NS0169351 EACH 300.00  
GT-23A - 2-4IN CLAMP  
52 NS0169352 EACH 350.00  
GT-23B - 6-8IN CLAMP  
53 NS0169353 EACH 475.00  
GT-23C - 10-12IN CLAMP  
54 NS0169357 LINEAR  
FOOT  
185.00  
GT-26A - UP TO 4IN  
55 NS0169361 LINEAR  
FOOT  
210.00  
GT-26AS - UP TO 4IN  
56 NS0169363 LINEAR  
FOOT  
272.00

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GT-26B - 6IN-8IN  
57 NS0169367 LINEAR  
FOOT  
305.00

GT-26BS - 6IN-8IN  
58 NS0169369 LINEAR  
FOOT  
275.00

GT-26C - 10IN-12IN  
59 NS0169373 LINEAR  
FOOT  
325.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

GT-26CS - 10IN-12IN  
60 NS0169375 LINEAR  
FOOT  
500.00

GT-26DS - 16IN-20IN  
61 NS0169377 LINEAR  
FOOT  
220.00

GT-26PA - UP TO 4IN  
62 NS0169378 LINEAR  
FOOT  
260.00

GT-26PAS - UP TO 4IN  
63 NS0169379 LINEAR  
FOOT  
310.00

GT-26PB - 6IN-8IN  
64 NS0169380 LINEAR  
FOOT  
340.00

GT-26PBS - 6IN-8IN  
65 NS0169381 LINEAR  
FOOT  
325.00

GT-26PC - 10IN-12IN  
66 NS0169382 LINEAR  
FOOT  
395.00

GT-26PCS - 10IN-12IN  
67 NS0169383 LINEAR  
FOOT  
615.00

GT-26PDS - 16IN-20IN  
68 NS0169376 LINEAR  
FOOT  
990.00

GT-26ES - 24-30INMAININSTALL  
69 NS0169384 LINEAR  
FOOT  
1125.00

GT-26PES - 24-30INMAININSTPROTD  
70 NS0169385 LINEAR

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FOOT  
55.00  
GT-27A - 2IN-4IN  
71 NS0169386 LINEAR  
FOOT  
82.00  
GT-27B - 6IN-8IN  
72 NS0169387 LINEAR  
FOOT  
110.00  
GT-27C - 12IN  
73 NS0168664 LINEAR  
FOOT  
100.00  
G-27BS - 6IN-8IN  
74 NS0168666 LINEAR  
FOOT  
137.00  
G-27CS - 12IN  
75 NS0168668 LINEAR  
FOOT  
189.00  
G-27DS - 16IN-20IN  
76 NS0168669 LINEAR  
FOOT  
280.00  
G-27ES - MAINOPENTRNH2430  
77 NS0169392 LINEAR  
FOOT  
58.00  
GT-29D - 4INMAININSERT  
COMPASS BPA 4058594, 2  
Proprietary and Confidential Page 7 of 57  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
78 NS0169393 LINEAR  
FOOT  
68.00  
GT-29E - 6INMAININSERTNONPROT  
79 NS0169394 LINEAR  
FOOT  
78.00  
GT-29F - 8PEPLASMAININSTNONPR  
80 NS0169397 LINEAR  
FOOT  
320.00  
GT-2AI1 - 1CTS-2IPS,<30FT  
81 NS0169400 LINEAR  
FOOT  
295.00  
GT-2AII1 - 1CTS-2IPS,>30FT  
82 NS0169417 LINEAR  
FOOT  
392.00  
GT-2PAI1 - 1CTS-2IPS,<30FT  
83 NS0169420 LINEAR  
FOOT  
372.00

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GT-2PAH1 - 1CTS-2IPS,>30FT

84 NS0169405 LINEAR

FOOT

380.00

GT-2BI1 - 3IPS-4IPS,<30FT

85 NS0169408 LINEAR

FOOT

360.00

GT-2BII1 - 3IPS-4IPS,>30FT

86 NS0168721 LINEAR

FOOT

430.00

G-2PBI1 - 3IPS-4IPS,<30FT

87 NS0168724 LINEAR

FOOT

430.00

G-2PBII1 - 3IPS-4IPS,>30FT

88 NS0168697 LINEAR

FOOT

420.00

G-2BIS1 - 2ST-4ST,<30FT

89 NS0169411 LINEAR

FOOT

380.00

GT-2BIIS1 - 2ST-4ST,>30FT

90 NS0168730 LINEAR

FOOT

600.00

G-2PBIS1 - 2ST-4ST,<30FT

91 NS0169429 LINEAR

FOOT

435.00

GT-2PBIIS1 - 2ST-4ST,>30FT

92 NS0168700 LINEAR

FOOT

465.00

G-2CI1 - 6IPS<30HPPLASTMANH

93 NS0168703 LINEAR

FOOT

407.00

G-2CII1 - 6IPS>30HPPLASTMANH

94 NS0168706 LINEAR

FOOT

428.00

G-2CIIS1 - 6IPS>30HPSTLMANH

95 NS0168709 LINEAR

FOOT

455.00

G-2CIS1 - 6IPS<30HPSTLMANH

96 NS0168733 LINEAR 595.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

FOOT

G-2PCI1 - 6IPS<30HPPLASTMANH

97 NS0168735 LINEAR

FOOT

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580.00  
G-2PCII1 - 6IPS>30HPPLASTMANH  
98 NS0168737 LINEAR  
FOOT  
575.00  
G-2PCIIS1 - 6IPS>30HPSTLMANH  
99 NS0168739 LINEAR  
FOOT  
590.00  
G-2PCIS1 - 6IPS<30HPSTLMANH  
100 NS0168749 EACH 3450.00  
G-31PSTAS - 2STLSERVXFERPROTECT  
101 NS0168750 EACH 3950.00  
G-31PSTBS - 3-4STLSERVXFERPROTEC  
102 NS0169437 EACH 1050.00  
GT-31A - 2IN+<SERVXFER  
103 NS0169438 EACH 1350.00  
GT-31AS - 2IN+<SERVXFER  
104 NS0169439 EACH 1450.00  
GT-31B - 3IN-4INSERVXFER  
105 NS0169440 EACH 1790.00  
GT-31BS - 3IN-4INSERVXFER  
106 NS0169441 EACH 2100.00  
GT-31C - 6IN-8INSERVXFER  
107 NS0169442 EACH 2400.00  
GT-31CS - 6IN-8INSERVXFER  
108 NS0169444 EACH 3100.00  
GT-31DS - 10IN-12INSERVXFER  
109 NS0168757 EACH 2300.00  
G-31STA - SERVXFER2IN<PLASTCOP  
110 NS0168759 EACH 2700.00  
G-31STB - SERVXFER3-4INPLASCOP  
111 NS0168761 EACH 2900.00  
G-31STC - SERVXFER6-8INPLASCOP  
112 NS0168762 EACH 3400.00  
G-31STCS - 6-8STLSVXFERNONPROTE  
113 NS0168763 EACH 3500.00  
G-31STD - SERXFR10-12INPLASCOP  
114 NS0168764 EACH 4000.00  
G-31STDS - 1012STLSVXFERNONPROT  
115 NS0169451 EACH 945.00  
GT-35A - UP TO 8IN SLEEVE  
116 NS0169452 EACH 1675.00  
GT-35B - 10IN-16INSLEEVE  
117 NS0169453 EACH 2400.00  
GT-35C - >16IN SLEEVE  
118 NS0169458 EACH 1625.00  
GT-36AA - COREDRILL2-4INPOESLEEV  
119 NS0169459 EACH 2150.00  
GT-36AB - COREDRILL6-8INPOESLEEV  
120 NS0169460 EACH 3250.00  
GT-36B - 10+>COREDRILL  
121 NS0169467 EACH 3500.00  
GT-3AI1 - 1CTS-1.25CTS,<30FT  
COMPASS BPA 4058594, 2

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)



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122 NS0169470 EACH 3800.00  
GT-3AII1 - 1CTS-1.25CTS,>30FT  
123 NS0169473 EACH 4350.00  
GT-3BI1 - 2IPS,<30FT  
124 NS0169476 EACH 4300.00  
GT-3BII1 - 2IPS,>30FT  
125 NS0169485 EACH 3500.00  
GT-3DI1 - 1CTS-1.25CTS,<30FT  
126 NS0169491 EACH 3900.00  
GT-3PAI1 - 1CTS-1.25CTS,<30FT  
127 NS0168813 EACH 4200.00  
G-3PAII1 - 1CTS-1.25CTS,>30FT  
128 NS0168816 EACH 4400.00  
G-3PBI1 - 2IPS,<30FT  
129 NS0169500 EACH 4600.00  
GT-3PBII1 - 2IPS,>30FT  
130 NS0169522 EACH 800.00  
GT-42B - OFFSET-6IN-8IN  
131 NS0169523 EACH 1200.00  
GT-42C - OFFSET-10IN12IN  
132 NS0169524 EACH 650.00  
GT-42D - WELDOFFSETUPTO4  
133 NS0169525 EACH 1800.00  
GT-42E - WELDOFFSET6-8IN  
134 NS0169526 EACH 2700.00  
GT-42F - WELDOFFSET10-12IN  
135 NS0169527 CYLIND  
ER  
740.00  
GT-43A - EXCAVRDWYNONPROT  
136 NS0169531 CYLIND  
ER  
980.00  
GT-43PA - EXCAVRDWYPROTECTED  
137 NS0169568 EACH 4300.00  
GT-4PBI1 - 1CTS-1.25IPS,<30FT  
138 NS0169619 EACH 2750.00  
GT-5AI1 - 1CTS-1.25CTS,<30FT  
139 NS0169631 EACH 3300.00  
GT-5BI1 - 2IPS,<30FT  
140 NS0169634 EACH 3225.00  
GT-5BII1 - 2IPS,>30FT  
141 NS0169643 EACH 3500.00  
GT-5CI1 - 3IPS-4IPS,<30FT  
142 NS0169646 EACH 3600.00  
GT-5CII1 - 3IPS-4IPS,>30FT  
143 NS0169649 EACH 3975.00  
GT-5CIIS1 - 3IPS-4IPS,>30FT  
144 NS0169664 EACH 2995.00  
GT-6AII1 - 0.5CTS,>30FT  
145 NS0169655 SQUARE  
FOOT  
14.00  
GT-60 - T113W/RECESSPLTS  
146 NS0169656 SQUARE  
FOOT  
20.00  
GT-61 - T112W/RECESSPLTS  
147 NS0169657 SQUARE 19.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

FOOT

GT-62 - RECESSPLATELFITEM

148 NS0169703 EACH 825.00

GT-75 - WELD2INTAPTEE

149 NS0169704 EACH 1425.00

GT-76 - TAPTEE3IN-4IN

150 NS0169705 EACH 1440.00

GT-77 - TAPTEE6IN-8IN

151 NS0169706 EACH 1525.00

GT-78 - TAPTEE3IN-4IN

152 NS0169707 EACH 1925.00

GT-79 - TAPTEE6IN-8IN

153 NS0169714 LINEAR

FOOT

745.00

GT-89A - GRINDRAZORBACKRIB

154 NS0169715 LINEAR

FOOT

590.00

GT-89B - GRINDSPIRALSTYLERIB

155 NS0169716 EACH 450.00

GT-8A - 2-4CUTOUT

156 NS0169718 EACH 600.00

GT-8B - 6-8CUTOUT

157 NS0169720 EACH 900.00

GT-8C - 10-12CUTOUT

158 NS0169721 EACH 1325.00

GT-8D - WINCUTOUT16-20

159 NS0169722 EACH 2600.00

GT-8E - WINCUTOUT24-36

160 NS0169723 EACH 340.00

GT-90A - WELDPIPEUPTO4IN

161 NS0169724 EACH 795.00

GT-90B - WELDPIPE6-8IN

162 NS0169725 EACH 1390.00

GT-90C - WELDPIPE12-16IN

163 NS0169726 EACH 3200.00

GT-90D - WELDPIPE20IN+>

164 NS0169727 EACH 60.00

GT-91A - FUSEPIPEUPTO4IN

165 NS0169728 EACH 65.00

GT-91B - FUSEPIPE6-8IN

166 NS0169729 EACH 140.00

GT-91C - FUSEPIPE10-12IN

167 NS0169734 EACH 2100.00

GT-9A - 0.5CTS-2IPS

168 NS0169735 EACH 2900.00

GT-9B - 3IPS-4IPS

169 NS0169738 EACH 2800.00

GT-9PA - 0.5CTS-2IPS

170 NS0169739 EACH 3400.00

GT-9PB - 3IPS-4IPS

171 NS0169204 EACH 550.00

GT-10A - 0.5CTS-2IPS

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172 NS0169205 EACH 850.00  
GT-10B - 3IPS-4IPS  
173 NS0170601 SQUARE 4.25  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
T101 - SOLID SHEETING  
174 NS0170608 LINEAR  
FOOT  
14.00  
T11 - LL14CONCRETEBASE  
175 NS0170609 SQUARE  
FOOT  
5.00  
T110 - VEHICULAR PLATES  
176 NS0170611 SQUARE  
FOOT  
8.80  
T112 - STRAPWELDEDPLATES  
177 NS0170612 SQUARE  
FOOT  
13.25  
T113 - STRAPWELDBEAMSPLATES  
178 NS0170614 SQUARE  
FOOT  
1.00  
T114 - PLATERENTALMAINT.  
179 NS0170632 EACH 850.00  
T125 - TESTPIT 0.1-4.0 CY  
180 NS0170641 EACH 1600.00  
T126 - TESTPIT 4.1-8.0 CY  
181 NS0170643 EACH 2325.00  
T127 - TESTPIT 8.1-15.0 CY  
182 NS0170763 EACH 4290.00  
T146 - FC B3-6,S,TS BOX  
183 NS0170838 EACH 2600.00  
T156 - B/O,DISPBOX/CONDUITS  
184 NS0170919 LINEAR  
FOOT  
5.00  
T180 - INST 2"-5"CONDUIT  
185 NS0170932 LINEAR  
FOOT  
25.00  
T183 - INST4"-5"SPLITCONDUI  
186 NS0170960 CYLIND  
ER  
200.00  
T2 - STREET/BASE/BRK  
187 NS0170979 EACH 300.00  
T211 - MOBILIZATION  
188 NS0171123 CYLIND  
ER  
260.00  
T31 - BINDER BASE  
189 NS0171129 CYLIND

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ER  
225.00  
T32 - CONCRETE BASE  
190 NS0171136 LINEAR  
FOOT  
40.00  
T33A - BEVEL CUT CONC. BASE  
191 NS0171049 CYLIND  
ER  
200.00  
T3 - BLOCKSTRBASEBRKREST  
192 NS0171143 CYLIND  
ER  
600.00  
T3R - BLOCKSTRBASEBRK  
193 NS0170732 LINEAR  
FOOT  
12.00  
COMPASS BPA 4058594, 2  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
T13RC - SAWCUT,REM,DESPASPH  
194 NS0171172 CYLIND  
ER  
290.00  
T42 - EXCA100 HAND<10FT  
195 NS0171224 LINEAR  
FOOT  
135.00  
T46L - LFTRENCH0-4 11"DP  
196 NS0171225 LINEAR  
FOOT  
150.00  
T46LA - LFTRENCH0-4 11"DPPRO  
197 NS0171303 CYLIND  
ER  
625.00  
T50 - ROCK  
198 NS0171314 CYLIND  
ER  
300.00  
T53 - INTACT MASONRY  
199 NS0171316 CYLIND  
ER  
300.00  
T54 - ENCLOSURES  
200 NS0171317 CYLIND  
ER  
480.00  
T55 - CARTROLLEYTRACKS  
201 NS0171319 CYLIND  
ER  
150.00  
T56 - CONCENCASSTLPIPE  
202 NS0171331 LINEAR  
FOOT  
21.00

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T70 - ABANDELECTSTDUCT

203 NS0171332 LINEAR

FOOT

40.00

T70A - SAMEAST708INPIPE

204 NS0171333 LINEAR

FOOT

64.00

T70B - LIKET70PIPE>16IN

205 NS0171344 CYLIND

ER

650.00

T7R - BRKRESTSDWKDRIV

206 NS0171329 CYLIND

ER

750.00

T6R - HEAVYREINCONRDBRKRES

207 NS0171349 EACH 50.00

T80 - TEST EXISTING FACS

208 NS0171360 CYLIND

ER

55.00

T92 - SAND BACKFILL

209 NS0171368 CYLIND

ER

60.00

T97 - LINFTBACKFILL

210 NS0170975 HOUR 75.00

T210 - DEWATERING

211 NS0171145 CYLIND

ER

650.00

T400 - FURN,INSTALPAVNOEXCV

212 NS0171148 CYLIND

ER

1475.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

T401 - EXCRMVMACINSTPREMPAV

213 NS0167712 LINEAR

FOOT

27.00

424 - TRAF CONT STRIP

214 NS0167713 LINEAR

FOOT

33.00

425 - TRAF STRIP >6IN

215 NS0171292 SQUARE

YARD

135.00

T480 - MILL+PAVE<=350SY

216 NS0168620 EACH 800.00

G-24A - 4-8JTENCAP

217 NS0168621 EACH 1200.00

G-24B - 10-12JTENCAP

218 NS0168622 EACH 2000.00

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G-24C - ENCAP16-20INJT  
219 NS0168623 EACH 2100.00  
G-24D - ENCAP24INJOINT  
220 NS0168624 EACH 2500.00  
G-24E - ENCAP30INJOINT  
221 NS0168625 EACH 2800.00  
G-24F - ENCAP36INJOINT  
222 NS0170734 EACH 161.00  
T14 - COMPACTION TEST  
223 NS0171059 HOUR 94.00  
T301 - LABORER/DRILLRUNNER  
224 NS0171066 HOUR 30.00  
T301D - LAB/DRILLRNROTDIFF  
225 NS0171070 HOUR 127.00  
T301X - LABORERDRILLRNRWKND  
226 NS0171071 HOUR 102.00  
T302 - LAB FOREMAN W/TRUCK  
227 NS0171072 HOUR 33.00  
T302D - LABFOREMW/TRK OTDIFF  
228 NS0171076 HOUR 128.00  
T302X - LABFOREMW/TRUCKWKND  
229 NS0171077 HOUR 130.00  
T303 - TEAMSTER, W/DUMPTRUCK  
230 NS0171079 HOUR 30.00  
T303ND - TEAM, W/DMPTRKNGTDIFF  
231 NS0171078 HOUR 34.00  
T303D - TEAM, W/DMPTRKOTDIFF  
232 NS0171083 HOUR 148.00  
T303X - TEAMSTERW/DMPTRKWKND  
233 NS0171084 HOUR 20.00  
T304 - COMPR/JHAMMERS  
234 NS0171086 HOUR 92.00  
T304M - ITEM304W/COMPRENDR  
235 NS0171088 HOUR 65.00  
T304MND - T304W/NIGHTDIFF  
236 NS0171087 HOUR 92.00  
T304MD - T304W/OTDIFF  
237 NS0171094 HOUR 20.00  
T304X - COMP/JACKHANNERWKND  
238 NS0171095 HOUR 175.00  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
T305 - OPENG W/BACKHOE  
239 NS0171107 HOUR 122.00  
T305ND - T305 W/NGT DIFF  
240 NS0171106 HOUR 110.00  
T305D - T305 W/OT DIFF  
241 NS0171112 HOUR 205.00  
T305X - OPENGRW/BACKHOEWKND  
242 NS0171096 HOUR 175.00  
T305A - OPERENGRWELDER  
243 NS0171099 HOUR 138.00  
T305AND - T305AW/NGTDIFF  
244 NS0171097 HOUR 104.00  
T305AD - T305AW/OT DIFF  
245 NS0171100 HOUR 219.00

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T305AX - OPERENGRWELDERWKND  
246 NS0171101 HOUR 160.00  
T305B - OPERENGRMAINTMAN  
247 NS0171104 HOUR 195.00  
T305BND - T305BW/NGTDIFF  
248 NS0171102 HOUR 104.00  
T305BD - T305BW/OT DIFF  
249 NS0171105 HOUR 215.00  
T305BX - OPENGRMAINTMANWKND  
250 NS0171113 HOUR 104.00  
T306 - TIMBERMAN/TOOLS/TRAN  
251 NS0171115 HOUR 30.00  
T306ND - T306W/NGT DIFF  
252 NS0171114 HOUR 31.00  
T306D - T306W/OT DIFF  
253 NS0171119 HOUR 150.00  
T306X - TIMBMN/TOOL/TRANWKND  
254 NS0187822 LINEAR  
FOOT  
145.00  
G-29DS - StlMainInsert4in  
**This line CANCELED on 12-DEC-2012**  
255 NS0187823 LINEAR  
FOOT  
205.00  
G-29ES - StlMainInsert6-8in  
**This line CANCELED on 12-DEC-2012**  
256 NS0187824 LINEAR  
FOOT  
270.00  
G-29FS - StlMainInsert10-12in  
**This line CANCELED on 12-DEC-2012**  
257 NS0187825 EACH 2700.00  
GT-9PCM - CutCapExcPro2-4in  
**This line CANCELED on 12-DEC-2012**  
258 NS0187826 EACH 2950.00  
GT-9PDM - CutCapExcPro6-8in  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
**This line CANCELED on 12-DEC-2012**  
259 NS0187827 EACH 4400.00  
GT-9PEM - CutCapExcPro10-12in  
**This line CANCELED on 12-DEC-2012**  
260 NS0187828 EACH 9900.00  
GT-9PFM - CutCapExcPro16-20in  
**This line CANCELED on 12-DEC-2012**  
261 NS0187829 EACH 15990.00  
GT-9PGM - CutCapExcPro24-30in  
**This line CANCELED on 12-DEC-2012**  
262 NS0187830 EACH 2300.00  
GT-9CM - CutCapExcNoP2-4in  
**This line CANCELED on 12-DEC-2012**  
263 NS0187831 EACH 2400.00  
GT-9DM - CutCapExcNoP6-8in  
**This line CANCELED on 12-DEC-2012**  
266 NS0187834 EACH 13000.00

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GT-9GM - CutCapExcNoP24-30in

**This line CANCELED on 12-DEC-2012**

267 NS0187835 EACH 850.00

GT-10CM - CutCapNoExc2-4in

**This line CANCELED on 12-DEC-2012**

268 NS0187836 EACH 1100.00

GT-10DM - CutCapNoExc6-8in

**This line CANCELED on 12-DEC-2012**

269 NS0187837 EACH 1375.00

GT-10EM - CutCapNoExc10-12in

**This line CANCELED on 12-DEC-2012**

271 NS0187839 EACH 3950.00

GT-10GM - CutCapNoExc24-30in

**This line CANCELED on 12-DEC-2012**

272 NS0188237 EACH 4000.00

GT-9EM - CutCapExcNoP10-12in

**This line CANCELED on 12-DEC-2012**

273 NS0188238 EACH 9000.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

GT-9FM - CutCapExcNoP16-20in

**This line CANCELED on 12-DEC-2012**

274 NS0188239 EACH 2700.00

GT-10FM - CutCapNoExc16-20in

**This line CANCELED on 12-DEC-2012**

277 NS0187804 LINEAR

FOOT

145.00

G-29DS - StlMainInsert4in

278 NS0187805 LINEAR

FOOT

205.00

G-29ES - StlMainInsert6-8in

279 NS0187806 LINEAR

FOOT

270.00

G-29FS - StlMainInsert10-12in

280 NS0187807 EACH 2700.00

GT-9PCM - CutCapExcPro2-4in

281 NS0187809 EACH 4400.00

GT-9PEM - CutCapExcPro10-12in

282 NS0187811 EACH 15990.00

GT-9PGM - CutCapExcPro24-30in

283 NS0187813 EACH 2400.00

GT-9DM - CutCapExcNoP6-8in

284 NS0187816 EACH 13000.00

GT-9GM - CutCapExcNoP24-30in

285 NS0187818 EACH 1100.00

GT-10DM - CutCapNoExc6-8in

286 NS0187819 EACH 1375.00

GT-10EM - CutCapNoExc10-12in

287 NS0187820 EACH 2700.00

GT-10FM - CutCapNoExc16-20in

288 NS0187821 EACH 3950.00

GT-10GM - CutCapNoExc24-30in

289 NS0188231 EACH 2950.00



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GT-9PDM - CutCapExcPro6-8in

290 NS0188232 EACH 9900.00

GT-9PFM-CutCapExcPro16-20

291 NS0188233 EACH 2300.00

GT-9CM - CutCapExcNoP2-4in

292 NS0188234 EACH 4000.00

GT-9EM - CutCapExcNoP10-12in

293 NS0188235 EACH 9000.00

GT-9FM - CutCapExcNoP16-20in

294 NS0188236 EACH 850.00

GT-10CM - CutCapNoExc2-4in

295 NS0169972 EACH 1.00

MATINV - MATERIALINVOICE

296 NS0170141 EACH 10.00

PARTIAL - PATRIALPAYMENT

297 NS0170248 EACH 1.00

PREMIUM - PREMDIFFPAYMENT

298 NS0170249 EACH 10.00

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

PROGRESS - PROGRESSPAYMENT

299 NS0171140 EACH 1.00

T350 - TIMEEQPPAYMENT

300 NS0168393 EACH 1.00

BILCORRECT - BILL CORRECTION

301 NS0168423 EACH 1.00

EQPINV - EQUIPMENTINVOICE

302 NS0168451 EACH 1.00

FINECORRCT - FINENOVCORRECTION

303 NS0170598 EACH 1.00

SUBINV - SUBCONTRACTINVOICE

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the

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Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

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The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4058594,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag

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Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Terms and Conditions**

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**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

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December 7, 2010

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1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

Con Edison-Consolidated Edison Company of New York, Inc.

Contractor-The contractor named on the face of the Con Edison purchase order.

Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.

Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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3. Specifications, Plans, and Drawings

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit

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in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4. Price and Payment**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase.

All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4058594,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does

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not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4058594,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4058594,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to

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adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

### 7.Safeguards in Work

A.Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4058594,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D.Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall

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immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### **9. Contractor's Performance**

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in



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good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b)The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c)Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4058594,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4058594,

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any and all tests and comply with all performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair,

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replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### 13. Changes (Including Extra Work)

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

#### (a) Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### (b) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

#### (c) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

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C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14. Labor

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the

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performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### **15. Time and Material and Cost Reimbursable Work**

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4058594,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was

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begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Blanket Purchase Agreement 4058594,

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract.

Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16

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including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4058594,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may,

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without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23. Inspection and Tests and Correction of Defects

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture

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and methods of construction employed in connection therewith. Contractor shall provide Con Blanket Purchase Agreement 4058594,

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### **25.Subcontracting**

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights



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against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If

requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con

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Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and Blanket Purchase Agreement 4058594,

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such bonds shall so provide.

### 31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### 33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4058594,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to

## **Contains Confidential Commercial Information**

Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

Blanket Purchase Agreement 4058594,

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the

## Contains Confidential Commercial Information

property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4058594,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4058594,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison

## **Contains Confidential Commercial Information**

is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4058594,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:  
Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department  
Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to

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any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4058594,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4058594,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor

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without prejudice to the rights of the parties in respect of such claims.

47. **Conflicting Contract Documents.** To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. **Notices.** All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. **Entire Agreement.** The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. **New York Law.** The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. **Waiver of Trial by Jury.** Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4058594,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. **Submission to Jurisdiction/Choice of Forum**

A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. **Limitation on Time to Sue.** No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. **Performance of Work During Pendency of Disputes.** If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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Appendix A dated July 2007 A1 to A3

**Gift Policy**

**Gift Policy and Unlawful Conduct:**Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 14

CONTRACTOR: NICO ASPHALT PAVING INC

PURCHASE ORDER NO.: 4062941

BID COMPARISON:

\$25,594,596

\$26,490,108

\$32,552,609

\$50,159,506

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COMPASS BPA 4062941, 0  
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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**  
Type **COMPASS BPA**  
Order **4062941**

Revision **0**  
PO Approved Date **11/30/2012**  
Revision Date  
Current Buyer **Steven Sebastopoli**  
Supplier: **NICO ASPHALT PAVING INC**  
**COMPASS 341 NASSAU AVE**  
**BROOKLYN, NY 11222**  
**UNITED STATES**

Supplier  
Contact:  
**PIETRANICO MICHAEL**  
**7183021600**

Key  
ConEd  
Contact:  
**Steven Sebastopoli**  
Ship To: **4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**  
Bill To: **PO Box 799**

**Cooper Station**  
**New York, NY 10276-0799**  
**UNITED STATES**  
Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via  
**5937 Immediate**  
Effective Start Date Effective End Date Amount Agreed (USD)  
**12/01/2012 11/30/2015 20,500,000.00**

**Notes:** MANHATTAN – Area Paving Contract

The work shall include but not limited to the following:

Provide supervision, labor, tools, equipment and material to perform the removal and disposal of temporary pavement, traffic control and permanent roadway restoration services throughout Manhattan for a three-year period.

**NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.**

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$20,500,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED**

COMPASS BPA 4062941, 0  
Proprietary and Confidential Page 2 of 45  
MODIFICATION TO THIS PURCHASE ORDER.  
CON EDISON AUTHORIZED REPRESENTATIVES ARE:  
FELIM MCTAGUE 917/418-7218

Fran Kennedy 646/879-5834  
AL SALGADO 917/807-9074

THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:

- CON EDISONS INVITATION TO BID EVENT# 36884 DATED April 20, 2012 AND

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ALL DOCUMENTS REFERENCED THEREIN.

- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008
- CON EDISON'S SPECIAL CONDITIONS DATED February 17, 2012.
- CON EDISON'S Restoration Manual dated February 7, 2012 Revision 009.
- Nico's SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED April 14, 2012. Nico did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED April 16 and 18, 2012.

A total of 3 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com.

PRICING TERMS:

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PRICING SHALL BE FIRM FOR YEAR 1 and YEAR 2 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 36884) WITH A 3rd YEAR ESCALATION MULTIPLIER. THE Third Year ESCALATION MULTIPLIER OF 1.02 (2.0%) SHALL BE APPLIED AGAINST YEAR 1 PRICING.

NICO CONTACT:

=====

Mike Pietranico 718 302 1600

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIES HAVING COMPASS BPA 4062941, 0

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JURISDICTION FOR THIS TYPE OF WORK.

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0167665 EACH 100.00

212 - PREM CREW HOUR OVRT

2 NS0167702 CYLIND

ER

1220.00

400 - INSTALL TOP

3 NS0167703 CYLIND

ER

980.00

401 - REM/INST WEAR COURSE

4 NS0167704 LINEAR

FOOT

5.50

410 - ASPHALT SEALER

5 NS0167705 CYLIND

ER

583.00

411 - ASPHALT BASE W/EXCAV

6 NS0167706 CYLIND

ER

444.00

412 - ASPH BASE NO EXCAV

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7 NS0167708 LINEAR  
FOOT  
12.50  
419 - REF MEMBRANE-MIN 6IN  
8 NS0167709 EACH 175.50  
421 - ADJUST CV BOX  
9 NS0167710 LINEAR  
FOOT  
10.80  
422 - SAW CUT ASPHALT  
10 NS0167711 EACH 32.50  
423 - MOVE VEH. PLATES  
11 NS0167712 LINEAR  
FOOT  
12.60  
424 - TRAF CONT STRIP  
12 NS0167713 LINEAR  
FOOT  
14.75  
425 - TRAF STRIP >6IN  
13 NS0167714 LINEAR  
FOOT  
5.80  
428 - PIN AND RAPM REMOVAL  
14 NS0167715 CYLIND  
ER  
472.00  
436 - LL14 TOP AND CONC BASE  
15 NS0167716 CYLIND  
ER  
456.40  
438 - LL14 TOP AND BINDER BS  
16 NS0167718 LINEAR  
FOOT  
29.40  
443 - LL14 TOP CONC BASE  
17 NS0167719 LINEAR  
FOOT  
25.75  
444 - LL14 TOP BINDE BS  
18 NS0167723 SQUARE  
YARD  
102.50  
478 - PAVE UPTO 3SY NOMIN  
COMPASS BPA 4062941, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
19 NS0167724 SQUARE  
YARD  
86.50  
479 - PAVE 3 TO 50SY NOMIN  
20 NS0167725 SQUARE  
YARD  
80.50  
480 - PAVE 50 TO 350 SY  
21 NS0167726 SQUARE  
YARD

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64.00  
481 - PAVE 350.1-800 SY  
22 NS0167762 EACH 500.00  
572 - RAPID RESPONSE  
23 NS0167763 EACH 5000.00  
573 - PLANT OPENING  
24 NS0167766 EACH 160.00  
592 - RD/GR PAINT<=50  
25 NS0167767 SQUARE  
YARD  
58.00  
593 - RD/GR PAINT <200  
26 NS0167769 SQUARE  
YARD  
48.85  
595 - RD/GR PAINT >700  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Terms**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

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December 7, 2010

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- 1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:  
Con Edison-Consolidated Edison Company of New York, Inc.  
Contractor-The contractor named on the face of the Con Edison purchase order.  
Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.  
Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.  
Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.
- 2. Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con

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Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Blanket Purchase Agreement 4062941,

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Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### 3. Specifications, Plans, and Drawings

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### 4. Price and Payment

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase.

All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con

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Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4062941,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims



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have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4062941,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

7. Safeguards in Work

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4062941,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other Blanket Purchase Agreement 4062941,

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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9. Contractor's Performance

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A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4062941,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison)

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arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4062941,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### 13. Changes (Including Extra Work)

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

(a) Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and

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Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### (b)Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

### (c)Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14.Labor

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to

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workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work

A.Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B.Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C.For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4062941,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and  
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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for

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which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4062941,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law.

Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final



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acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative

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all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

### 23.Inspection and Tests and Correction of Defects

A.Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### 25.Subcontracting

A.Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28.Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29.Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release

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and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and Blanket Purchase Agreement 4062941,

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such bonds shall so provide.

31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the

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Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4062941,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation

## **Contains Confidential Commercial Information**

of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4062941,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors,

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with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4062941,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4062941,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4062941,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con



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Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4062941,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4062941,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum

A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the

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Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

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**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to

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furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities Blanket Purchase Agreement 4062941,

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(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to

## **Contains Confidential Commercial Information**

comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Blanket Purchase Agreement 4062941,

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Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of

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this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

Blanket Purchase Agreement 4062941,

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(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 15

CONTRACTOR : TRI MESSINE CONSTRUCTION CO

PURCHASE ORDER NO. : 4063027

BID COMPARISON:

\$24,657,823

\$29,657,044

\$49,625,396

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COMPASS BPA 4063027, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4063027**

Revision **0**

PO Approved Date **11/30/2012**

Revision Date

Current Buyer **Steven Sebastopoli**

Supplier: **TRI MESSINE CONSTRUCTION CO**

**COMPASS 2703 N JERUSALEM RD**

**EAST MEADOW, NY 11554**

**UNITED STATES**

Supplier

Contact:

**MESSINA JEAN**

**5166799797**

Key

ConEd

Contact:

**Steven Sebastopoli**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**7616 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/01/2012 11/30/2015 18,100,000.00**

**Notes:** BRONX – Area Paving Contract

The work shall include but not limited to the following:

Provide supervision, labor, tools, equipment and material to perform the removal and disposal of temporary pavement, traffic control and permanent roadway restoration services throughout the Bronx for a three-year period.

**NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.**

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$18,100,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED COMPASS BPA 4063027, 0**

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**MODIFICATION TO THIS PURCHASE ORDER.**

**CON EDISON AUTHORIZED REPRESENTATIVES ARE:**

Jeff Rutowski 646/296-3133

**THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:**

**- CON EDISONS INVITATION TO BID EVENT# 36884 DATED April 20, 2012 AND ALL DOCUMENTS REFERENCED THEREIN.**



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- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008
- CON EDISON'S SPECIAL CONDITIONS DATED February 17, 2012.
- CON EDISON'S Restoration Manual dated February 7, 2012 Revision 009.
- Tri-Messine's SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED April 19, 2012. Tri-Messine did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED April 16 and 18, 2012.

A total of 3 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com.

PRICING TERMS:

=====

PRICING SHALL BE FIRM FOR YEAR 1 and YEAR 2 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 36884) WITH A 3rd YEAR ESCALATION MULTIPLIER. THE Third Year ESCALATION MULTIPLIER OF 1.02 (2.0%) SHALL BE APPLIED AGAINST YEAR 1 PRICING.

Tri-Messine CONTACT:

=====

Al Messina 516 679- 9797

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

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All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0167666 EACH 85.374

213 - NIGHT PREM CREW HR

2 NS0167702 CYLIND

ER

703.08

400 - INSTALL TOP

3 NS0167703 CYLIND

ER

1004.40

401 - REM/INST WEAR COURSE

4 NS0167704 LINEAR

FOOT

1.0044

410 - ASPHALT SEALER

5 NS0167705 CYLIND

ER

401.76

411 - ASPHALT BASE W/EXCAV

6 NS0167706 CYLIND

ER

336.474

412 - ASPH BASE NO EXCAV

7 NS0167708 LINEAR

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FOOT  
1.0044  
419 - REF MEMBRANE-MIN 6IN  
8 NS0167709 EACH 10.044  
421 - ADJUST CV BOX  
9 NS0167710 LINEAR  
FOOT  
2.0088  
422 - SAW CUT ASPHALT  
10 NS0167711 EACH 21.0924  
423 - MOVE VEH. PLATES  
11 NS0167712 LINEAR  
FOOT  
10.044  
424 - TRAF CONT STRIP  
12 NS0167713 LINEAR  
FOOT  
14.0616  
425 - TRAF STRIP >6IN  
13 NS0167715 CYLIND  
ER  
477.09  
436 - LL14 TOP AND CONC BASE  
14 NS0167716 CYLIND  
ER  
426.87  
438 - LL14 TOP AND BINDER BS  
15 NS0167718 LINEAR  
FOOT  
31.1364  
443 - LL14 TOP CONC BASE  
16 NS0167719 LINEAR  
FOOT  
21.0924  
444 - LL14 TOP BINDE BS  
17 NS0167723 SQUARE  
YARD  
100.44  
478 - PAVE UPTO 3SY NOMIN  
18 NS0167724 SQUARE  
YARD  
80.352  
479 - PAVE 3 TO 50SY NOMIN  
19 NS0167725 SQUARE 75.33  
COMPASS BPA 4063027, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
YARD  
480 - PAVE 50 TO 350 SY  
20 NS0167726 SQUARE  
YARD  
45.198  
481 - PAVE 350.1-800 SY  
21 NS0167727 SQUARE  
YARD  
36.1584  
482 - PAVE >800.1 SY

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22 NS0167729 CYLIND  
ER  
500.1912  
500 - R/R SIDEWALK  
23 NS0167730 CYLIND  
ER  
548.4024  
501 - R/R REINF CONC SDW  
24 NS0167731 LINEAR  
FOOT  
3.5154  
503 - SAWCUT SIDEWALK  
25 NS0167733 CYLIND  
ER  
279.00  
510 - B/O CONC/TEMP PAV  
26 NS0167734 CYLIND  
ER  
574.5168  
511 - B/O REM REINF RD  
27 NS0167735 CYLIND  
ER  
502.20  
512 - INSTALL CONCR BASE  
28 NS0167736 EACH 8.0352  
513 - INST COATED DOWELS  
29 NS0167737 LINEAR  
FOOT  
7.44  
514 - SAWCUT REINF CONC  
30 NS0167738 LINEAR  
FOOT  
26.1144  
515 - B/O 12IN CONC CURB  
31 NS0167753 EACH 2.79  
534 - FURNISH BRICK  
32 NS0167754 SQUARE  
YARD  
35.154  
535 - FURNISH FLAGSTONE  
33 NS0167755 LINEAR  
FOOT  
10.044  
541 - INSTALL JOINT FILL  
34 NS0167756 EACH 2790.00  
543 - REGRADE ROOF SLAB  
35 NS0167758 EACH 3720.00  
545 - R/R SLAB COLLAR  
36 NS0167762 EACH 251.10  
572 - RAPID RESPONSE  
37 NS0167764 EACH 372.00  
574 - RDWAY/SIDEWK PLATES  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**terms and conditions**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

Blanket Purchase Agreement 4063027,

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December 7, 2010

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1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

Con Edison-Consolidated Edison Company of New York, Inc.

Contractor-The contractor named on the face of the Con Edison purchase order.

Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.

Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Blanket Purchase Agreement 4063027,

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Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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**3.Specifications, Plans, and Drawings**

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the

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written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4. Price and Payment**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase.

All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4063027,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations

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under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4063027,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule.

Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4063027,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to

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require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

### 7.Safeguards in Work

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4063027,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the

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employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### 9. Contractor's Performance

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison,



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any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b)The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c)Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4063027,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10.Con Edison's Authority

A.Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B.Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11.Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12.Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a)as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b)as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4063027,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B.In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced

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or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### **13. Changes (Including Extra Work)**

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

#### **(a) Labor**

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(b) Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

#### **(c) Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and

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unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14. Labor

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any

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way out of services performed by or Con Edison's use of persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### **15. Time and Material and Cost Reimbursable Work**

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4063027,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have

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ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Blanket Purchase Agreement 4063027,

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract.

Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law.

Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work,

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property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23. Inspection and Tests and Correction of Defects

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con  
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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### 25.Subcontracting

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.



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26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And

Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change

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order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and Blanket Purchase Agreement 4063027,  
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such bonds shall so provide.

### **31. Other Contractors**

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### **33. Termination for Convenience**

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4063027,  
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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the

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termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and

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employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4063027,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4063027,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation

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or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4063027,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

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41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4063027,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4063027,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other

## **Contains Confidential Commercial Information**

documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4063027,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum

A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

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#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

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#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business

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Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities Blanket Purchase Agreement 4063027,

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(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal

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Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Blanket Purchase Agreement 4063027,

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Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### Signatures

#### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

Blanket Purchase Agreement 4063027,

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(Title) (Title) )

(Date) (Date)

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ATTACHMENT NO. 16

CONTRACTOR : T MORIARTY & SON INC

PURCHASE ORDER NO. : 4064664

BID COMPARISON:

\$1,223,300

\$1,385,000

\$1,397,000

\$1,449,000

\$1,577,870

\$1,622,000

\$1,777,000

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COMPASS Complex Service PO  
4064664, 1  
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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4064664**

Revision **1**

PO Approved Date **01/09/2013**

Revision Date **01/09/2013**

Buyer **Lisa Presotto**

Supplier: **T MORIARTY & SON INC**

**63 CREAMER ST  
BROOKLYN, NY 11231  
UNITED STATES**

Supplier

Contact:

**HOHL ED**

**(718) 858-4800**

Key

ConEd

Contact:

**Wilfred Nunez**

**212-466-8345**

**NUNEZW@CONED.COM**

Ship To: **30 WORTH STREET**

**YONKERS, NY 10701**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**7496 Immediate**

**Notes:** Per Perfect Commerce Bid Event 37030, T. Moriarty & Son shall furnish supervision, labor, tools and materials to complete the scope of work for the upgrade of the Phase Angle Regulator Deluge System at the Dunwoodie Substation.

The scope of work includes excavation of soil and stone, installation of new crushed stone, below grade conduits, new deluge and drainage piping, spray rings and a grounding system, and final grading of all areas.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$1,077,000. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of the aforesaid expenditure limitation.

Price: \$1,077,000

Construction Schedule: 100 Calendar Days

This purchase order will be performed in accordance with & incorporates by reference the following:

COMPASS Complex Service PO

4064664, 1

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- All documents referenced in Con Edison's Bid Event 37030, Specifications CE-SS-3500-23974-10 and all associated documents, drawings and specifications.

- Special Conditions dated 5/2/2012

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- Clarification 1 dated 9/13/12 posted to the Event
- Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/12.
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 06/10/2008
- EH&S Requirements
- Contractor's Compliance & Exception, Offer & Disclosure Forms dated 9/17/2012 (No Exceptions)

No contractor can perform any work before a hasp is approved by EH&S.

Reference Documents: Supplemental Construction Contract Requirements (SCCR).pdf

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

1 Needed:

05/31/2013

1 EACH 1077000.0

0

1,077,000.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 53,850.00

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

05/31/2013

1 EACH 1077000.0

0

1,077,000.00

Ship To:

Use the ship-to address at the top of page 1

Total: **1,077,000.00 (USD)**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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### Appendix A - Required Clauses and Certifications

#### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

1. Definitions. The following terms as used herein shall have the meanings stated:

"Con Edison" -Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

"Contractor" -The contractor who is a party to the Contract with Con Edison .

"Contract" -The contract between Con Edison and Contractor consisting of: (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or a Con Edison Standard Purchase Order ("purchase order"); (b) the relevant Con Edison request for quotation; (c) these Standard Terms and Conditions; and (d) any documents or portions thereof incorporated by reference in (a), (b) or (c) above, including, but not limited to, special conditions, specifications, performance requirements, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms on which quotations were requested by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not Standard Purchase Order 4064664, 1

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3. Specifications, Plans, and Drawings.

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and



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process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4.Price and Payment.**

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A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B.Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C.For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance

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of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof

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for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update Con Edison on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be Contractor's sole and exclusive remedy for such delay and Con Edison shall not be liable for any damages or additional costs incurred as a result of such delay.

7.Safeguards in Work.

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with

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the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4064664, 1

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9.Contractor's Performance.

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule.

Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

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B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations.

Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best

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accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

### **13. Changes (Including Extra Work).**

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### **(i) Labor**

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(ii) Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such

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materials (and any other back-up documentation).

(iii) Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor.

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4064664, 1

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall

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immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4064664, 1

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work.

A.Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a T&M or other cost reimbursable basis.

B.Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C.For Work performed on a T&M basis, Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D.All work performed on a T&M basis shall be subject to Article 12 (Warranties) above.

E.The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F.Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.



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G.No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16.Claims.

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A.The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, no claims for damages or additional costs on account of delay shall be permitted.

B.For each claim for Non-Contract Work, as defined in (A)(i) of this Article, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Costs, as defined in (A)(ii) of this Article, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison.

(i)For each claim for Non-Contract Work, as defined in (A)(i) of this Article, these detailed records shall include:

- (a)The name, title, trade local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed; and
- (b)The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

(ii)For each claim for Increased Costs, as defined in (A)(ii) of this Article, these detailed records must include:

- (a)The date the Increased Costs were incurred;
- (b)The name, title, trade local, and number of the workers who performed the work whose costs were increased;
- (c)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; and
- (d)The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available to Con Edison documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, shall be deemed a conclusive and binding determination by the Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control

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program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Standard Purchase Order 4064664, 1

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor is required to assure that all vehicles, including those of Subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any Standard Purchase Order 4064664, 1

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fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

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The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4064664, 1

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

- (i) halt the continuation of such Work; and
- (ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or
- (iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or
- (iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or

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furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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### **25.Subcontracting.**

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

C.If the Contract is on a cost-plus or T&M basis and is in an amount exceeding \$100,000 and Contractor enters into a subcontract with a Subcontractor to whom Contractor is subcontracting all or any portion of the performance to be rendered hereunder on a cost-plus or T&M basis in an amount exceeding \$5,000, immediately after Contractor enters into such subcontract, Contractor shall send a copy of such subcontract to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

Technology and Strategic Initiatives

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Investigation and Audit. Contractor hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison or O&R or any federal, state or local government agency or authority relating to any aspect of this Contract or the Work, and the Contractor shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event the Contract now provides or in the future is revised to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the

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Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents Standard Purchase Order 4064664, 1

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment

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therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

### **31. Other Contractors.**

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4064664, 1

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### **33. Termination for Convenience.**

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4064664, 1

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the

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termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4064664, 1

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify



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it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison or O&R, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to the Contract (including, but not limited to, O&R). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with not less than the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Con Edison.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation diseases (with a limit of not less than \$1,000,000 per employee).

(iii) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 per occurrence and, for at least three (3) years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds with respect to the Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. The insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos

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Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, engineering, design, or other professional services, Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the duration of the Contract and for at least three years following final completion and acceptance of the Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

At least three days prior to commencing Work, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E of this Article and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

To the fullest extent allowed by law, Contractor agrees that this is an insured contract and that the insurance required herein is intended to cover each of Con Edison and O&R for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison.

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows:

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if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39.Amendments. No revision or modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4064664, 1

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison.

Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel

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for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### **42. Ownership of Documents and Materials; Ownership of Intangible Property**

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for O&R (hereinafter "O&R Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use O&R may make of them, shall be the sole and exclusive property of O&R. To the extent that any of the O&R Materials comprises copyrightable Standard Purchase Order 4064664, 1

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con

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Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

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cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor under the Contract or any other contract between Con Edison and the Contractor or otherwise, any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor or otherwise, without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be

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construed to limit or qualify the meaning of any such article, section or paragraph.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York, applicable to agreements made and to be performed in that state. Standard Purchase Order 4064664, 1

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51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the state and federal courts situated in the City of New York or in Rockland or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

55. Enablement in the Procurement System. In the event Contractor is not presently enabled in the Procurement System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Contractor shall promptly become enabled.

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, representatives and Subcontractors have not engaged and will not engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or

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covenants and/or the commission of any act prohibited under this Article, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such contracts, and in law and equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply Standard Purchase Order 4064664, 1

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with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not

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result in any liability of Con Edison to the Contractor.

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### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.



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### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items Standard Purchase Order 4064664, 1

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(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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337858

### **Signatures**

#### **Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

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Name Name  
(Title) (Title)  
(Date) (Date)

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ATTACHMENT NO. 17

CONTRACTOR : TRI MESSINE CONSTRUCTION CO

PURCHASE ORDER NO. : 4065008

BID COMPARISON:

\$30,451,383

\$33,942,778

\$35,622,658

\$53,635,742

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COMPASS BPA 4065008, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4065008**

Revision **0**

PO Approved Date **11/30/2012**

Revision Date

Current Buyer **Steven Sebastopoli**

Supplier: **TRI MESSINE CONSTRUCTION CO**

**COMPASS 2703 N JERUSALEM RD**

**EAST MEADOW, NY 11554**

**UNITED STATES**

Supplier

Contact:

**MESSINA JEAN**

**5166799797**

Key

ConEd

Contact:

**Steven Sebastopoli**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**7616 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/01/2012 11/30/2015 25,400,000.00**

**Notes:** BROOKLYN – Area Paving Contract

The work shall include but not limited to the following:

Provide supervision, labor, tools, equipment and material to perform the removal and disposal of temporary pavement, traffic control and permanent roadway restoration services throughout Brooklyn for a three-year period.

**NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.**

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$25,400,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED**

COMPASS BPA 4065008, 0

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**MODIFICATION TO THIS PURCHASE ORDER.**

**CON EDISON AUTHORIZED REPRESENTATIVE IS:**

Pat Ambrosio 347/203-8472

**THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:**

- CON EDISONS INVITATION TO BID EVENT# 36884 DATED April 20, 2012 AND ALL DOCUMENTS REFERENCED THEREIN.

- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS

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DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008

- CON EDISON'S SPECIAL CONDITIONS DATED February 17, 2012.
- CON EDISON'S Restoration Manual dated February 7, 2012 Revision 009.
- Tri-Messine's SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED April 19, 2012. Tri-Messine did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED April 16 and 18, 2012.

A total of 3 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com.

PRICING TERMS:

=====

PRICING SHALL BE FIRM FOR YEAR 1 and YEAR 2 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 36884) WITH A 3rd YEAR ESCALATION MULTIPLIER. THE Third Year ESCALATION MULTIPLIER OF 1.02 (2.0%) SHALL BE APPLIED AGAINST YEAR 1 PRICING.

Tri-Messine CONTACT:

=====

Al Messina 516 679- 9797

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

COMPASS BPA 4065008, 0

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All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0167702 CYLIND

ER

853.74

400 - INSTALL TOP

2 NS0167703 CYLIND

ER

1004.40

401 - REM/INST WEAR COURSE

3 NS0167704 LINEAR

FOOT

1.0044

410 - ASPHALT SEALER

4 NS0167705 CYLIND

ER

361.584

411 - ASPHALT BASE W/EXCAV

5 NS0167706 CYLIND

ER

351.54

412 - ASPH BASE NO EXCAV

6 NS0167708 LINEAR

FOOT

2.0088

419 - REF MEMBRANE-MIN 6IN

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7 NS0167709 EACH 10.044  
421 - ADJUST CV BOX  
8 NS0167710 LINEAR  
FOOT  
6.0264  
422 - SAW CUT ASPHALT  
9 NS0167711 EACH 21.0924  
423 - MOVE VEH. PLATES  
10 NS0167712 LINEAR  
FOOT  
10.044  
424 - TRAF CONT STRIP  
11 NS0167713 LINEAR  
FOOT  
14.0616  
425 - TRAF STRIP >6IN  
12 NS0167714 LINEAR  
FOOT  
7.44  
428 - PIN AND RAPM REMOVAL  
13 NS0167715 CYLIND  
ER  
477.09  
436 - LL14 TOP AND CONC BASE  
14 NS0167716 CYLIND  
ER  
426.87  
438 - LL14 TOP AND BINDER BS  
15 NS0167718 LINEAR  
FOOT  
31.1364  
443 - LL14 TOP CONC BASE  
16 NS0167719 LINEAR  
FOOT  
10.044  
444 - LL14 TOP BINDE BS  
17 NS0167723 SQUARE  
YARD  
100.44  
478 - PAVE UPTO 3SY NOMIN  
18 NS0167724 SQUARE  
YARD  
80.352  
479 - PAVE 3 TO 50SY NOMIN  
COMPASS BPA 4065008, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
19 NS0167725 SQUARE  
YARD  
75.33  
480 - PAVE 50 TO 350 SY  
20 NS0167726 SQUARE  
YARD  
36.1584  
481 - PAVE 350.1-800 SY  
21 NS0167727 SQUARE  
YARD

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36.1584  
482 - PAVE >800.1 SY  
22 NS0167732 LINEAR  
FOOT  
42.1848  
509 - BEVEL CUT ROADWAY  
23 NS0167736 EACH 10.044  
513 - INST COATED DOWELS  
24 NS0167762 EACH 251.10  
572 - RAPID RESPONSE  
25 NS0167764 EACH 372.00  
574 - RDWAY/SIDEWK PLATES  
26 NS0167767 SQUARE

YARD  
60.45  
593 - RD/GR PAINT <200  
27 NS0167768 SQUARE

YARD  
48.36  
594 - RD/GR PAINT <700  
28 NS0167769 SQUARE

YARD  
44.6958  
595 - RD/GR PAINT >700  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**terms**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

of

**CONSTRUCTION CONTRACTS**

Blanket Purchase Agreement 4065008,  
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December 7, 2010

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1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:  
Con Edison-Consolidated Edison Company of New York, Inc.  
Contractor-The contractor named on the face of the Con Edison purchase order.  
Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.  
Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment,

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tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Blanket Purchase Agreement 4065008,

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Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### 3.Specifications, Plans, and Drawings

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### 4.Price and Payment

A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4065008,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each



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subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4065008,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a

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representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule.

Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4065008,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

7. Safeguards in Work

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

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B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4065008,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other Blanket Purchase Agreement 4065008,

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the

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Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### 9. Contractor's Performance

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4065008,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison's Authority

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A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4065008,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### 13. Changes (Including Extra Work)

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in

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Contractor's cost of performance and profit thereon.

B.The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

(a)Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

(b)Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

(c)Equipment

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C.Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D.In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E.Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F.Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14.Labor

A.Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available.

Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor,(or a similar law, regulation, or code pertaining to sites located outside of New York

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City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor,(or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work

A.Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B.Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative. If Contractor should perform work on a premium time basis without obtaining such consent then

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all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4065008,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Blanket Purchase Agreement 4065008,

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,



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(2)The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4)The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4065008,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be

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provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any

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fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23. Inspection and Tests and Correction of Defects

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Blanket Purchase Agreement 4065008,

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a) halt the continuation of such Work; and

(b) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c) perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional

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work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### **25. Subcontracting**

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real

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property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and Blanket Purchase Agreement 4065008,

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such bonds shall so provide.

31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to

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be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### **33.Termination for Convenience**

A.Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4065008,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B.In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise. Blanket Purchase Agreement 4065008,

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made"

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The

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insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4065008,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of



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the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4065008,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4065008,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the

## **Contains Confidential Commercial Information**

cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4065008,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4065008,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

### 52.Submission to Jurisdiction/Choice of Forum

A.Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B.Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53.Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54.Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

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**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition

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Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities

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(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING** (these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Blanket Purchase Agreement 4065008,

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Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees,

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agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

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(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 18

CONTRACTOR : TRI MESSINE CONSTRUCTION CO

PURCHASE ORDER NO. : 4065009

BID COMPARISON:

\$34,658,862

\$37,170,334

\$42,246,396

\$44,767,616



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COMPASS BPA 4065009, 0  
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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **COMPASS BPA**

Order **4065009**

Revision **0**

PO Approved Date **11/30/2012**

Revision Date

Current Buyer **Steven Sebastopoli**

Supplier: **TRI MESSINE CONSTRUCTION CO**

**COMPASS 2703 N JERUSALEM RD**

**EAST MEADOW, NY 11554**

**UNITED STATES**

Supplier

Contact:

**MESSINA JEAN**

**5166799797**

Key

ConEd

Contact:

**Steven Sebastopoli**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**7616 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/01/2012 11/30/2015 25,900,000.00**

**Notes:** QUEENS – Area Paving Contract

The work shall include but not limited to the following:

Provide supervision, labor, tools, equipment and material to perform the removal and disposal of temporary pavement, traffic control and permanent roadway restoration services throughout Queens for a three-year period.

**NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.**

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$25,900,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED**

COMPASS BPA 4065009, 0

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**MODIFICATION TO THIS PURCHASE ORDER.**

**CON EDISON AUTHORIZED REPRESENTATIVE IS:**

**Kevin McKeefrey 917/337-5967**

**THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:**

**- CON EDISONS INVITATION TO BID EVENT# 36884 DATED April 20, 2012 AND ALL DOCUMENTS REFERENCED THEREIN.**

**- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS**

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DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008

- CON EDISON'S SPECIAL CONDITIONS DATED February 17, 2012.
- CON EDISON'S Restoration Manual Revision 009 dated February 7, 2012.
- Tri-Messine's SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED April 19, 2012. Tri-Messine did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED April 16 and 18, 2012.

A total of 3 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a 100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions. Send all Certified Payrolls to Jennifer Nellis 347-920-7346 nellisj@coned.com.

PRICING TERMS:

=====

PRICING SHALL BE FIRM FOR YEAR 1 and YEAR 2 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 36884) WITH A 3rd YEAR ESCALATION MULTIPLIER. THE Third Year ESCALATION MULTIPLIER OF 1.02 (2.0%) SHALL BE APPLIED AGAINST YEAR 1 PRICING.

Tri-Messine CONTACT:

=====

Al Messina 516 679- 9797

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

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All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0167702 CYLIND

ER

602.64

400 - INSTALL TOP

2 NS0167703 CYLIND

ER

1104.84

401 - REM/INST WEAR COURSE

3 NS0167704 LINEAR

FOOT

2.511

410 - ASPHALT SEALER

4 NS0167705 CYLIND

ER

361.584

411 - ASPHALT BASE W/EXCAV

5 NS0167706 CYLIND

ER

336.474

412 - ASPH BASE NO EXCAV

6 NS0167709 EACH 10.5462

421 - ADJUST CV BOX

7 NS0167710 LINEAR

FOOT

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2.0088  
422 - SAW CUT ASPHALT  
8 NS0167711 EACH 21.0924  
423 - MOVE VEH. PLATES  
9 NS0167712 LINEAR  
FOOT  
10.044  
424 - TRAF CONT STRIP  
10 NS0167714 LINEAR  
FOOT  
5.58  
428 - PIN AND RAPM REMOVAL  
11 NS0167713 LINEAR  
FOOT  
14.0616  
425 - TRAF STRIP >6IN  
12 NS0167716 CYLIND  
ER  
426.87  
438 - LL14 TOP AND BINDER BS  
13 NS0167719 LINEAR  
FOOT  
21.0924  
444 - LL14 TOP BINDE BS  
14 NS0167715 CYLIND  
ER  
477.09  
436 - LL14 TOP AND CONC BASE  
15 NS0167718 LINEAR  
FOOT  
31.1364  
443 - LL14 TOP CONC BASE  
16 NS0167723 SQUARE  
YARD  
100.44  
478 - PAVE UPTO 3SY NOMIN  
17 NS0167724 SQUARE  
YARD  
80.352  
479 - PAVE 3 TO 50SY NOMIN  
18 NS0167725 SQUARE  
YARD  
75.33  
480 - PAVE 50 TO 350 SY  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
19 NS0167726 SQUARE  
YARD  
45.198  
481 - PAVE 350.1-800 SY  
20 NS0167727 SQUARE  
YARD  
36.1584  
482 - PAVE >800.1 SY  
21 NS0167732 LINEAR  
FOOT

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42.1848  
509 - BEVEL CUT ROADWAY  
22 NS0167736 EACH 10.044  
513 - INST COATED DOWELS  
23 NS0167762 EACH 251.10  
572 - RAPID RESPONSE  
24 NS0167764 EACH 372.00  
574 - RDWAY/SIDEWK PLATES  
25 NS0167767 SQUARE  
YARD  
60.45  
593 - RD/GR PAINT <200  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**terms**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
STANDARD TERMS AND CONDITIONS**

of

**CONSTRUCTION CONTRACTS**

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December 7, 2010

-  
1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:  
Con Edison-Consolidated Edison Company of New York, Inc.  
Contractor-The contractor named on the face of the Con Edison purchase order.  
Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.  
Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.  
Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.  
2.Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Blanket Purchase Agreement 4065009,

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Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### 3.Specifications, Plans, and Drawings

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### 4.Price and Payment

A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4065009,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B.For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all

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unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4065009,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under

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prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule.

Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4065009,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

7. Safeguards in Work

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4065009,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including,

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but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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9. Contractor's Performance

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything



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requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4065009,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by

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Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4065009,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### 13. Changes (Including Extra Work)

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

(a) Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working

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foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **(b)Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

### **(c)Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14.Labor**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever

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Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### 15. Time and Material and Cost Reimbursable Work

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative. If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4065009,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

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E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts,

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a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4065009,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is

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corrected, and all costs associated therewith shall be borne by Contractor.

22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23.Inspection and Tests and Correction of Defects

A.Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Blanket Purchase Agreement 4065009,

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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25.Subcontracting

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder



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without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing.

Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such

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documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and Blanket Purchase Agreement 4065009,

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such bonds shall so provide.

31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4065009,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

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35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4065009,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable,

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each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4065009,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4065009,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

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Certificates of Insurance identifying the Contract shall be sent to:  
Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, N.Y. 10003  
Attention: Purchasing Department  
Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4065009,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint

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employers of Contractor's employees.

44.No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45.Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4065009,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46.Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47.Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48.Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49.Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50.New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51.Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4065009,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52.Submission to Jurisdiction/Choice of Forum

A.Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in

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a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

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**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government.

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The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities Blanket Purchase Agreement 4065009,

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(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and

## **Contains Confidential Commercial Information**

that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Blanket Purchase Agreement 4065009,

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Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

Blanket Purchase Agreement 4065009,

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(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 19

CONTRACTOR : PAB CONTRACTING INC

PURCHASE ORDER NO. : 4065010

BID COMPARISON:

\$11,713,499

\$14,292,582

\$14,943,138

\$15,193,077

\$15,322,623

\$28,069,259

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COMPASS BPA 4065010, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4065010**

Revision **0**

PO Approved Date **11/30/2012**

Revision Date

Current Buyer **Steven Sebastopoli**

Supplier: **PAB CONTRACTING INC**

**COMPASS 190 HARMON AVE**

**NEW ROCHELLE, NY 10801**

**UNITED STATES**

Supplier

Contact:

**BONGO PAT**

Key

ConEd

Contact:

**Steven Sebastopoli**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**5619 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/01/2012 11/30/2015 12,400,000.00**

**Notes:** WESTCHESTER EAST – Area Paving Contract

The work shall include but not limited to the following:

Provide supervision, labor, tools, equipment and material to perform the removal and disposal of temporary pavement, traffic control and permanent roadway restoration services throughout Eastern Westchester county for a three-year period.

**NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.**

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$12,400,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED COMPASS BPA 4065010, 0**

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**MODIFICATION TO THIS PURCHASE ORDER.**

**CON EDISON AUTHORIZED REPRESENTATIVE IS:**

John Hughes 646/772-3261

**THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:**

- CON EDISONS INVITATION TO BID EVENT# 36884 DATED April 20, 2012 AND ALL DOCUMENTS REFERENCED THEREIN.

- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION

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CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008

- CON EDISON'S SPECIAL CONDITIONS DATED March 30, 2012.
- CON EDISON'S Restoration Manual Revision 009 dated February 7, 2012.
- PAB Contracting's SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED April 16, 2012. PAB Contracting did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED April 16 and 18, 2012.

A total of 3 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

**PRICING TERMS:**

=====

PRICING SHALL BE FIRM FOR YEAR 1 and YEAR 2 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 36884) WITH A 3rd YEAR ESCALATION MULTIPLIER. THE Third Year ESCALATION MULTIPLIER OF 1.02 (2.0%) SHALL BE APPLIED AGAINST YEAR 1 PRICING.

**PAB CONTACT:**

=====

Pat Bongo 914-235-6181

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

1 NS0167697 CYLIND

ER

166.64

COMPASS BPA 4065010, 0

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

286 - CRUSHED BLUESTONE

2 NS0167700 SQUARE

FOOT

3.60

294 - ASPH SEALR ON DRVWAY

3 NS0167702 CYLIND

ER

390.00

400 - INSTALL TOP

4 NS0167703 CYLIND

ER

493.00

401 - REM/INST WEAR COURSE

5 NS0167704 LINEAR

FOOT

1.17

410 - ASPHALT SEALER

6 NS0167705 CYLIND

ER

352.65

411 - ASPHALT BASE W/EXCAV

7 NS0167706 CYLIND

ER

404.80

412 - ASPH BASE NO EXCAV

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8 NS0167710 LINEAR  
FOOT  
3.57  
422 - SAW CUT ASPHALT  
9 NS0167711 EACH 28.00  
423 - MOVE VEH. PLATES  
10 NS0167712 LINEAR  
FOOT  
6.00  
424 - TRAF CONT STRIP  
11 NS0167713 LINEAR  
FOOT  
8.00  
425 - TRAF STRIP >6IN  
12 NS0167723 SQUARE  
YARD  
200.00  
478 - PAVE UPTO 3SY NOMIN  
13 NS0167724 SQUARE  
YARD  
75.00  
479 - PAVE 3 TO 50SY NOMIN  
14 NS0167725 SQUARE  
YARD  
67.25  
480 - PAVE 50 TO 350 SY  
15 NS0167726 SQUARE  
YARD  
60.06  
481 - PAVE 350.1-800 SY  
16 NS0167727 SQUARE  
YARD  
41.00  
482 - PAVE >800.1 SY  
17 NS0167729 CYLIND  
ER  
575.00  
500 - R/R SIDEWALK  
18 NS0167730 CYLIND  
ER  
675.00  
501 - R/R REINF CONC SDW  
19 NS0167731 LINEAR  
FOOT  
5.35  
503 - SAWCUT SIDEWALK  
20 NS0167734 CYLIND 390.00  
COMPASS BPA 4065010, 0  
Proprietary and Confidential Page 4 of 45  
Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
ER  
511 - B/O REM REINF RD  
21 NS0167735 CYLIND  
ER  
275.52  
512 - INSTALL CONCR BASE  
22 NS0167736 EACH 44.98



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513 - INST COATED DOWELS

23 NS0167737 LINEAR

FOOT

11.50

514 - SAWCUT REINF CONC

24 NS0167738 LINEAR

FOOT

35.75

515 - B/O 12IN CONC CURB

25 NS0167739 LINEAR

FOOT

37.85

516 - B/O 18IN CONC CURB

26 NS0167742 LINEAR

FOOT

45.00

519 - BLUSTONE/GRAN CURB

27 NS0167745 SQUARE

YARD

172.70

522 - RELAY GRANITE BLOCK

28 NS0167747 SQUARE

YARD

150.00

524 - RELAY BRICK TOP

29 NS0167748 SQUARE

YARD

150.00

525 - INST FLAGSTONE S/W

30 NS0167749 LINEAR

FOOT

25.00

526 - F+I ASPHALT CURB

31 NS0167751 EACH 3.50

532 - FURN GRANITE BLOCK

32 NS0167753 EACH 1.15

534 - FURNISH BRICK

33 NS0167754 SQUARE

YARD

55.00

535 - FURNISH FLAGSTONE

34 NS0167761 CYLIND

ER

127.50

548 - CRUCHEDED STONE

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**Contract Terms and Conditions**

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**Terms and Conditions**

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### Standard Terms terms

### CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. STANDARD TERMS AND CONDITIONS

of

### CONSTRUCTION CONTRACTS

Blanket Purchase Agreement 4065010,

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December 7, 2010

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1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

Con Edison-Consolidated Edison Company of New York, Inc.

Contractor-The contractor named on the face of the Con Edison purchase order.

Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.

Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Blanket Purchase Agreement 4065010,

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Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### 3. Specifications, Plans, and Drawings

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all

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such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4. Price and Payment**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase.

All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4065010,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid

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claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4065010,  
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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and  
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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of

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governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

### **7.Safeguards in Work**

A.Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4065010,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D.Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the

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Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### 9. Contractor's Performance

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment,

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receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4065010,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

- (a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and
- (b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4065010,

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any and all tests and comply with all performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

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C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### **13. Changes (Including Extra Work)**

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

#### **(a) Labor**

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(b) Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

#### **(c) Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.



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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former

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employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### **15. Time and Material and Cost Reimbursable Work**

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4065010,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation

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alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Blanket Purchase Agreement 4065010,

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4065010,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its

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subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law.

Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused,

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Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23. Inspection and Tests and Correction of Defects

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison advance written notice thereof. Con Edison shall have the right to require

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require

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Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### 25.Subcontracting

A.Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27.Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part

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thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and

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such bonds shall so provide.

31. Other Contractors

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A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### 33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4065010,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors



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resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

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37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4065010,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4065010,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con

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Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4065010,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of

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creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4065010,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4065010,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of

## Contains Confidential Commercial Information

Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4065010,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum

A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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Appendix A dated July 2007 A1 to A3

**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

## **Contains Confidential Commercial Information**

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

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### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities Blanket Purchase Agreement 4065010,

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(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); and **(iv)** the clause entitled "Blanket Purchase Agreement 4065010,

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## Contains Confidential Commercial Information

Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### Signatures

#### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

Blanket Purchase Agreement 4065010,

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(Title) (Title)

(Date) (Date)

**Contains Confidential Commercial Information**

ATTACHMENT NO. 20

CONTRACTOR : PETRILLO CONTRACTING INC

PURCHASE ORDER NO. : 4065011

BID COMPARISON:

\$12,871,131

\$15,385,388

\$15,940,397

\$16,546,251

\$27,116,309

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COMPASS BPA 4065011, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4065011**

Revision **0**

PO Approved Date **11/30/2012**

Revision Date

Current Buyer **Steven Sebastopoli**

Supplier: **PETRILLO CONTRACTING INC**

**COMPASS 41 EDISON AVE**

**MOUNT VERNON, NY 10550**

**UNITED STATES**

Supplier

Contact:

**PETRILLO PAUL**

**9146654141**

Key

ConEd

Contact:

**Steven Sebastopoli**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**5987 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/01/2012 11/30/2015 14,600,000.00**

**Notes:** WESTCHESTER WEST – Area Paving Contract

The work shall include but not limited to the following:

Provide supervision, labor, tools, equipment and material to perform the removal and disposal of temporary pavement, traffic control and permanent roadway restoration services throughout Western Westchester county for a three-year period.

**NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.**

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$14,600,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED COMPASS BPA 4065011, 0**

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**MODIFICATION TO THIS PURCHASE ORDER.**

**CON EDISON AUTHORIZED REPRESENTATIVE IS:**

**John Hughes 646/772-3261**

**THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:**

**- CON EDISONS INVITATION TO BID EVENT# 36884 DATED April 20, 2012 AND ALL DOCUMENTS REFERENCED THEREIN.**

**- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS**

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DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008

- CON EDISON'S SPECIAL CONDITIONS DATED March 30, 2012.
- CON EDISON'S Restoration Manual Revision 009 dated February 7, 2012.
- Petrillo's SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED April 18, 2012. Petrillo did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED April 16 and 18, 2012.

A total of 3 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

**PRICING TERMS:**

=====

PRICING SHALL BE FIRM FOR YEAR 1 and YEAR 2 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 36884) WITH A 3rd YEAR ESCALATION MULTIPLIER. THE Third Year ESCALATION MULTIPLIER OF 1.01 (1.0%) SHALL BE APPLIED AGAINST YEAR 1 PRICING.

**Petrillo CONTACT:**

=====

Charles Petrillo 914 665 4141

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

1 NS0167697 CYLIND

ER

107.10

286 - CRUSHED BLUESTONE

2 NS0167700 SQUARE

FOOT

4.28

COMPASS BPA 4065011, 0

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount

(USD)

294 - ASPH SEALR ON DRVWAY

3 NS0167702 CYLIND

ER

413.00

400 - INSTALL TOP

4 NS0167703 CYLIND

ER

505.00

401 - REM/INST WEAR COURSE

5 NS0167704 LINEAR

FOOT

1.34

410 - ASPHALT SEALER

6 NS0167705 CYLIND

ER

393.00

411 - ASPHALT BASE W/EXCAV

7 NS0167706 CYLIND

ER

446.00

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412 - ASPH BASE NO EXCAV  
8 NS0167710 LINEAR  
FOOT  
4.25  
422 - SAW CUT ASPHALT  
9 NS0167711 EACH 64.26  
423 - MOVE VEH. PLATES  
10 NS0167712 LINEAR  
FOOT  
10.71  
424 - TRAF CONT STRIP  
11 NS0167713 LINEAR  
FOOT  
12.85  
425 - TRAF STRIP >6IN  
12 NS0167723 SQUARE  
YARD  
210.00  
478 - PAVE UPTO 3SY NOMIN  
13 NS0167724 SQUARE  
YARD  
105.00  
479 - PAVE 3 TO 50SY NOMIN  
14 NS0167725 SQUARE  
YARD  
80.22  
480 - PAVE 50 TO 350 SY  
15 NS0167726 SQUARE  
YARD  
68.40  
481 - PAVE 350.1-800 SY  
16 NS0167727 SQUARE  
YARD  
45.15  
482 - PAVE >800.1 SY  
17 NS0167729 CYLIND  
ER  
630.00  
500 - R/R SIDEWALK  
18 NS0167730 CYLIND  
ER  
735.00  
501 - R/R REINF CONC SDW  
19 NS0167731 LINEAR  
FOOT  
6.96  
503 - SAWCUT SIDEWALK  
20 NS0167733 CYLIND  
ER  
293.17  
510 - B/O CONC/TEMP PAV  
21 NS0167734 CYLIND 580.00  
COMPASS BPA 4065011, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
ER  
511 - B/O REM REINF RD

**Contains Confidential Commercial Information**

22 NS0167735 CYLIND  
ER  
342.00  
512 - INSTALL CONCR BASE  
23 NS0167736 EACH 50.87  
513 - INST COATED DOWELS  
24 NS0167737 LINEAR  
FOOT  
13.81  
514 - SAWCUT REINF CONC  
25 NS0167738 LINEAR  
FOOT  
38.99  
515 - B/O 12IN CONC CURB  
26 NS0167739 LINEAR  
FOOT  
41.34  
516 - B/O 18IN CONC CURB  
27 NS0167742 LINEAR  
FOOT  
40.70  
519 - BLUSTONE/GRAN CURB  
28 NS0167744 SQUARE  
YARD  
23.56  
521 - RELAY Z BRICK  
29 NS0167745 SQUARE  
YARD  
155.30  
522 - RELAY GRANITE BLOCK  
30 NS0167746 SQUARE  
YARD  
155.30  
523 - RELAY ASPHALT BLOCK  
31 NS0167747 SQUARE  
YARD  
128.00  
524 - RELAY BRICK TOP  
32 NS0167748 SQUARE  
YARD  
171.36  
525 - INST FLAGSTONE S/W  
33 NS0167749 LINEAR  
FOOT  
32.13  
526 - F+I ASPHALT CURB  
34 NS0167751 EACH 5.36  
532 - FURN GRANITE BLOCK  
35 NS0167752 EACH 3.75  
533 - FURN ASPHALT BLOCK  
36 NS0167759 CYLIND  
ER  
267.75  
546 - 5000 PSI REINF CEMNT  
37 NS0167760 CYLIND  
ER  
187.43  
547 - SAND BACKFILL  
38 NS0167761 CYLIND

**Contains Confidential Commercial Information**

ER

187.43

548 - CRUCHED STONE

39 NS0167762 EACH 1178.10

572 - RAPID RESPONSE

Blanket Purchase Agreement 4065011,

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**terms**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

Blanket Purchase Agreement 4065011,

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December 7, 2010

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1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

Con Edison-Consolidated Edison Company of New York, Inc.

Contractor-The contractor named on the face of the Con Edison purchase order.

Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.

Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Blanket Purchase Agreement 4065011,

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Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### **3. Specifications, Plans, and Drawings**

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4. Price and Payment**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4065011,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto



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the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4065011,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall

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complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and  
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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

7.Safeguards in Work

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test  
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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the

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extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F.Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### 9.Contractor's Performance

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

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B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4065011,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **10. Con Edison's Authority**

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### **12. Warranties**

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

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(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4065011,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### 13. Changes (Including Extra Work)

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

(a) Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

(b) Materials

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

(c) Equipment

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Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### 14. Labor

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but

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not limited to seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking Blanket Purchase Agreement 4065011,

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specified documents to establish both an individual's identity and legal authorization to work.

Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### **15. Time and Material and Cost Reimbursable Work**

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4065011,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost

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reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### 16. Claims

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each



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Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4065011,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing

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equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the

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specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

### **23. Inspection and Tests and Correction of Defects**

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

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B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a) halt the continuation of such Work; and

(b) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c) perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### **25. Subcontracting**

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations

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hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And

Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to

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pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and Blanket Purchase Agreement 4065011,

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such bonds shall so provide.

31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4065011,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of

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Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work.

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Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4065011,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the



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provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4065011,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or

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remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4065011,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46.Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47.Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48.Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49.Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50.New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51.Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4065011,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52.Submission to Jurisdiction/Choice of Forum

A.Contractors hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B.Contractors consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53.Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

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54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

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**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

**UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns

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(MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities Blanket Purchase Agreement 4065011,

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(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

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The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Blanket Purchase Agreement 4065011,

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Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### **Signatures**

#### **Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

Blanket Purchase Agreement 4065011,

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(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 21

CONTRACTOR : HC CONSTRUCTORS INC

PURCHASE ORDER NO. : 4065012

BID COMPARISON:

\$5,152,606

\$5,296,138

\$5,551,419

\$8,276,128

\$9,214,172

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Type **COMPASS BPA**

Order **4065012**

Revision **0**

PO Approved Date **11/29/2012**

Revision Date

Current Buyer **Steven Sebastopoli**

Supplier: **HC CONSTRUCTORS INC**

**PO BOX 855**

**WHITEHOUSE STATION, NJ 08889**

**UNITED STATES**

Supplier

Contact:

**POPE LIZA**

**(908) 534-3833**

Key

ConEd

Contact:

**Steven Sebastopoli**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**12562 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/01/2012 11/30/2015 4,600,000.00**

**Notes:** WESTCHESTER NORTH – Area Paving Contract

The work shall include but not limited to the following:

Provide supervision, labor, tools, equipment and material to perform the removal and disposal of temporary pavement, traffic control and permanent roadway restoration services throughout Northern Westchester county for a three-year period.

**NO VENDOR/CONTRACTOR CAN PERFORM ANY WORK BEFORE A SITE SPECIFIC HASP IS APPROVED BY EH&S.**

**ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.**

**EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER PURCHASE ORDER IS \$4,600,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION AND THE CONTRACTOR SHALL NOT BE OBLIGATED TO CONTINUE PERFORMANCE UNLESS AND UNTIL AN INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED COMPASS BPA 4065012, 0**

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**MODIFICATION TO THIS PURCHASE ORDER.**

**CON EDISON AUTHORIZED REPRESENTATIVE IS:**

**John Hughes 646/772-3261**

**THIS PURCHASE ORDER WILL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:**

**- CON EDISONS INVITATION TO BID EVENT# 36884 DATED April 20, 2012 AND ALL DOCUMENTS REFERENCED THEREIN.**



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- CON EDISON'S STANDARD TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS DATED DECEMBER 7, 2010 AND CON EDISON'S SUPPLEMENTAL CONSTRUCTION CONTRACT REQUIREMENTS (C-CM-003R1) DATED JUNE 10, 2008
- CON EDISON'S SPECIAL CONDITIONS DATED March 30, 2012.
- CON EDISON'S Restoration Manual Revision 009 dated February 7, 2012.
- HC Constructors SIGNED OFFER, EXCEPTION, DISCLOSURE AND COMPLIANCE FORM DATED April 19, 2012. HC Constructors did not take any exceptions.
- CON EDISON'S CLARIFICATIONS/ADDENDUM DATED April 16 and 18, 2012.

A total of 3 Clarifications/ Addendum were issued.

- SPECIAL CONDITIONS OF PURCHASE-INDEFINITE QUANTITY CONTRACT DATED 4/29/09

**PRICING TERMS:**

PRICING SHALL BE FIRM FOR YEAR 1 and YEAR 2 (BASED ON THE ORIGINAL AND REVISED BIDS RELATED TO BID EVENT # 36884) WITH A 3rd YEAR ESCALATION MULTIPLIER. THE Third Year ESCALATION MULTIPLIER OF 1.10 (10.0%) SHALL BE APPLIED

AGAINST YEAR 1 PRICING.

HC Constructors CONTACT:

Lisa Chowansky 908 301 0187

ALL WORK MUST BE PERFORMED IN STRICT ACCORDANCE WITH THE RULINGS OF ALL FEDERAL, STATE, CITY AND LOCAL REGULATORY AUTHORITIESHAVING JURISDICTION FOR THIS TYPE OF WORK.

Reference Documents: Restoration Manual Dated 2-7-12 Revision 9.pdf

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

1 NS0167702 CYLIND

ER

350.00

400 - INSTALL TOP

2 NS0167703 CYLIND 550.00

COMPASS BPA 4065012, 0

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price

(USD)

Amount

(USD)

ER

401 - REM/INST WEAR COURSE

3 NS0167704 LINEAR

FOOT

8.00

410 - ASPHALT SEALER

4 NS0167705 CYLIND

ER

434.00

411 - ASPHALT BASE W/EXCAV

5 NS0167710 LINEAR

FOOT

6.00

422 - SAW CUT ASPHALT

6 NS0167711 EACH 65.00

423 - MOVE VEH. PLATES

7 NS0167712 LINEAR

FOOT

8.00

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424 - TRAF CONT STRIP  
8 NS0167713 LINEAR  
FOOT  
16.00  
425 - TRAF STRIP >6IN  
9 NS0167723 SQUARE  
YARD  
334.00  
478 - PAVE UPTO 3SY NOMIN  
10 NS0167724 SQUARE  
YARD  
225.00  
479 - PAVE 3 TO 50SY NOMIN  
11 NS0167725 SQUARE  
YARD  
68.00  
480 - PAVE 50 TO 350 SY  
12 NS0167726 SQUARE  
YARD  
41.50  
481 - PAVE 350.1-800 SY  
13 NS0167727 SQUARE  
YARD  
37.00  
482 - PAVE >800.1 SY  
14 NS0167729 CYLIND  
ER  
545.00  
500 - R/R SIDEWALK  
15 NS0167730 CYLIND  
ER  
556.00  
501 - R/R REINF CONC SDW  
16 NS0167731 LINEAR  
FOOT  
5.00  
503 - SAWCUT SIDEWALK  
17 NS0167734 CYLIND  
ER  
350.00  
511 - B/O REM REINF RD  
18 NS0167737 LINEAR  
FOOT  
8.00  
514 - SAWCUT REINF CONC  
19 NS0167742 LINEAR  
FOOT  
99.00  
519 - BLUSTONE/GRAN CURB  
20 NS0167745 SQUARE  
YARD  
99.00  
522 - RELAY GRANITE BLOCK  
COMPASS BPA 4065012, 0  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
21 NS0167747 SQUARE

**Contains Confidential Commercial Information**

YARD  
52.45  
524 - RELAY BRICK TOP  
22 NS0167749 LINEAR  
FOOT  
30.00  
526 - F+I ASPHALT CURB  
23 NS0167761 CYLIND  
ER  
145.00  
548 - CRUCHED STONE  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**terms**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

Blanket Purchase Agreement 4065012,  
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Proprietary and Confidential Page 7 of 45  
December 7, 2010

-  
1.Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:  
Con Edison-Consolidated Edison Company of New York, Inc.  
Contractor-The contractor named on the face of the Con Edison purchase order.  
Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.  
Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.  
Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.  
2.Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Blanket Purchase Agreement 4065012,  
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Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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### **3.Specifications, Plans, and Drawings**

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractors shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4.Price and Payment**

A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase.

All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B.For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or

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not it is acceptable shall be conclusive.

C.For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D.Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E.Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4065012,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F.Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G.Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H.Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the

## **Contains Confidential Commercial Information**

Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4065012,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

7. Safeguards in Work

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4065012,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison against any liability resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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9. Contractor's Performance

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every

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item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(a) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances. Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4065012,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.



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### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4065012,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### 13. Changes (Including Extra Work)

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

(a) Labor

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be

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construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **(b)Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

### **(c)Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14. Labor**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to

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delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work

A.Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B.Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C.For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4065012,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D.All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E.The hourly rates for time and material and cost reimbursable contracts include profit and all

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indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Blanket Purchase Agreement 4065012,

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the

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actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4065012,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law.

Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such Blanket Purchase Agreement 4065012,

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

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22.Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

### 23.Inspection and Tests and Correction of Defects

A.Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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25.Subcontracting

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the

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Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained



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percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and Blanket Purchase Agreement 4065012,

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such bonds shall so provide.

31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4065012,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process,

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material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" Blanket Purchase Agreement 4065012,

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage.

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Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4065012,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4065012,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, N.Y. 10003  
Attention: Purchasing Department  
Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take Blanket Purchase Agreement 4065012,

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

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44.No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45.Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless Blanket Purchase Agreement 4065012,

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46.Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47.Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48.Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49.Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50.New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51.Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4065012,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52.Submission to Jurisdiction/Choice of Forum

A.Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

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B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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**Appendix A**

**APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

**APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

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**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

**ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

**CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to



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the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

Blanket Purchase Agreement 4065012,

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### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities Blanket Purchase Agreement 4065012,

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(FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security

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agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Blanket Purchase Agreement 4065012,

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Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

337730

### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

337858

### **Signatures**

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**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

Blanket Purchase Agreement 4065012,

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(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 22

CONTRACTOR : VALI INDUSTRIES INC

PURCHASE ORDER NO. : 4069066

BID COMPARISON:

\$7,129,550  
\$7,243,890  
\$8,112,216  
\$8,581,330  
\$9,405,545  
\$10,185,970  
\$11,526,230  
\$27,479,651  
\$29,450,910  
\$40,712,007  
\$41,786,431

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COMPASS BPA 4069066, 3  
Proprietary and Confidential Page 1 of 45  
**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES**

Type **COMPASS BPA**

Order **4069066**

Revision **3**

PO Approved Date **01/30/2013**

Revision Date **01/30/2013**

Current Buyer **Lisa Presotto**

Supplier: **VALI INDUSTRIES INC**

**COMPASS 90 SCOTT AVE**

**BROOKLYN, NY 11237**

**UNITED STATES**

Supplier

Contact:

**ALI JR VINCENT**

**(718) 821-5555**

Key

ConEd

Contact:

**Lisa Presotto**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10075 Immediate BEST WAY DELIVERED**

Effective Start Date Effective End Date Amount Agreed (USD)

**12/02/2012 11/30/2015 6,067,162.00**

**Notes:** The Scope of Work Shall include but not limited to: Furnish all labor, material, equipment,  
Required to perform Test Pits at various locations in Brooklyn and Queens.

Work to be performed during the period December 2, 2012 through November 30, 2015

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison  
EH&S.

All work to be performed in accordance with Con Edison's Standard Terms and Conditions of  
Construction Contracts dated December 7, 2010 and the Con Edison's Supplemental Construction  
Contract Requirements (C-CM-003R1) dated June 7, 2008.

Con Edison Representatives is:

Jeffery Zuzzolo telephone 347 386 6158

This Purchase Order will be performed in accordance with the following which are incorporated herein  
by reference:

- Con Edison's Invitation to Bid Event 36519 dated 11/7/11 and all documents referenced  
therein. Special Conditions Revised dated 12/7/11 included in bid event 36519.

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- Vali's signed Offer, Exception, Disclosure, and Compliance Form dated  
12/14/11. Vali took no exceptions to bid documents, plans or specifications.

In accordance with New York State Law and the terms of this Purchase Order, Contractor will maintain a  
100% Payment Bond for the duration of this Purchase Order. All bond documentation shall be  
forwarded to Jennifer Nellis 347-920-7346 nellisj@coned.com.

Prevailing Wages and Certified Payrolls:

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Contractor shall submit monthly certified payrolls in accordance with New York State Prevailing Wages and Con Edison's Terms and Conditions

All prices and amounts on this order are expressed in USD

Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount (USD)

1 NS0170957 CYLIND

ER

90.00

T1R - STREET/NOBASE/BRKRES

2 NS0170601 SQUARE

FOOT

8.10

T101 - SOLID SHEETING

3 NS0170608 LINEAR

FOOT

12.60

T11 - LL14CONCRETEBASE

4 NS0170609 SQUARE

FOOT

4.50

T110 - VEHICULAR PLATES

5 NS0170611 SQUARE

FOOT

6.30

T112 - STRAPWELDEDPLATES

6 NS0170614 SQUARE

FOOT

11.70

T114 - PLATERENTALMAINT.

7 NS0170615 SQUARE

FOOT

18.00

T115 - PLATERENTALFORT112

8 NS0170617 SQUARE

FOOT

9.00

T117 - PEDESTRIAN PLATES

9 NS0170625 LINEAR

FOOT

11.70

T12 - LL14ASPHALTBRKREST

10 NS0170640 EACH 1710.00

T125R - TESTPIT 0.1-4.0 CY

11 NS0170642 EACH 2160.00

T126R - TESTPIT 4.1-8.0 CY

12 NS0170644 EACH 5220.00

T127R - TESTPIT 8.1-15.0 CY

13 NS0170646 EACH 8460.00

T128R - TESTPIT 15.1-25.0 CY

14 NS0170650 EACH 157.50

T129R - TESTPIT 0.1-4.0 CY

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price (USD)

Amount (USD)

15 NS0170660 LINEAR

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FOOT  
12.60  
T13 - LL14ASPHALTBRK  
16 NS0170732 LINEAR  
FOOT  
7.20  
T13RC - SAWCUT,REM,DESPASPH  
17 NS0170734 EACH 171.00  
T14 - COMPACTION TEST  
18 NS0171041 CYLIND  
ER  
360.00  
T2R - STREET/BASE/BRK/REST  
19 NS0171036 CYLIND  
ER  
697.50  
T2CR - B/OPAVMT,RET  
20 NS0171004 LINEAR  
FOOT  
49.50  
T21R - CONCRETE CURBS  
21 NS0171026 LINEAR  
FOOT  
112.50  
T23R - STEELNOSEDCURBS  
22 NS0170975 HOUR 108.00  
T210 - DEWATERING  
23 NS0171143 CYLIND  
ER  
225.00  
T3R - BLOCKSTRBASEBRK  
24 NS0171059 HOUR 85.50  
T301 - LABORER/DRILLRUNNER  
25 NS0171066 HOUR 36.00  
T301D - LAB/DRILLRNROTDIFF  
26 NS0171069 HOUR 67.50  
T301WD - T301WKDNDIFFRL  
27 NS0171060 HOUR 85.50  
T301A - FLAG PERSON W/TOOLS  
28 NS0171061 HOUR 36.00  
T301AD - FLGPERSONOTDIFFERENT  
29 NS0171064 HOUR 67.50  
T301AWD - T301AOVERTIMEDIFFRL  
30 NS0171071 HOUR 100.80  
T302 - LAB FOREMAN W/TRUCK  
31 NS0171072 HOUR 36.00  
T302D - LABFOREMW/TRK OTDIFF  
32 NS0171075 HOUR 81.00  
T302WD - T302WKDNDIFFRL  
33 NS0171077 HOUR 130.50  
T303 - TEAMSTER,W/DUMPTRUCK  
34 NS0171078 HOUR 45.00  
T303D - TEAM,W/DMPTRKOTDIFF  
35 NS0171079 HOUR 45.00  
T303ND - TEAM,W/DMPTRKNGTDIFF  
36 NS0171082 HOUR 90.00  
T303WD - T303WKDNDIFFRL  
37 NS0171084 HOUR 45.00  
T304 - COMPR/JHAMMERS

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38 NS0171086 HOUR 126.00  
T304M - ITEM304W/COMPRENDR  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
39 NS0171087 HOUR 58.50  
T304MD - T304W/OTDIFF  
40 NS0171088 HOUR 58.50  
T304MND - T304W/NIGHTDIFF  
41 NS0171091 HOUR 126.00  
T304MWD - 304M-WKNDDIFF  
42 NS0171095 HOUR 157.50  
T305 - OPENG W/BACKHOE  
43 NS0171106 HOUR 81.00  
T305D - T305 W/OT DIFF  
44 NS0171107 HOUR 54.00  
T305ND - T305 W/NGT DIFF  
45 NS0171111 HOUR 157.50  
T305WD - T305WKDNDIFFRFL  
46 NS0171113 HOUR 121.50  
T306 - TIMBERMAN/TOOLS/TRAN  
47 NS0171114 HOUR 36.00  
T306D - T306W/OT DIFF  
48 NS0171115 HOUR 36.00  
T306ND - T306W/NGT DIFF  
49 NS0171118 HOUR 81.00  
T306WD - T306WKDNDIFFRFL  
50 NS0171123 CYLIND  
ER  
171.00  
T31 - BINDER BASE  
51 NS0171129 CYLIND  
ER  
171.00  
T32 - CONCRETE BASE  
52 NS0171135 LINEAR  
FOOT  
3.00  
T33 - SAWCUT CONCRETE  
53 NS0171301 CYLIND  
ER  
157.50  
T4R - BLKRESURFNBASEBRKRES  
54 NS0171157 CYLIND  
ER  
103.50  
T40A - EXCAONLYMACHINEHAND  
55 NS0171158 CYLIND  
ER  
49.50  
T40B - BKFILONLYMACHINEHAND  
56 NS0171165 CYLIND  
ER  
162.00  
T41 - EXCAMACHHAND<10FT  
57 NS0171171 CYLIND  
ER



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202.50  
T41A - EXCAMACHHAND>10.1  
58 NS0171172 CYLIND  
ER

310.50  
T42 - EXCA100 HAND<10FT  
59 NS0171174 CYLIND  
ER

378.00  
T42A - EXCA100 HAND>10.1  
60 NS0171179 CYLIND  
ER

81.00  
T43 - EXCAMACHINEHAND<10FT  
COMPASS BPA 4069066, 3

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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount  
(USD)  
61 NS0171180 CYLIND  
ER

126.00  
T43A - EXCAMACHHAND>10.1  
62 NS0171183 CYLIND  
ER

166.50  
T44 - EXCA100 HAND<10FT  
63 NS0171184 CYLIND  
ER

234.00  
T44A - EXCA100 HAND>10.1  
64 NS0171323 CYLIND  
ER

405.00  
T5R - LGHTREINCONRDBRKREST  
65 NS0171303 CYLIND  
ER

720.00  
T50 - ROCK  
66 NS0171314 CYLIND  
ER

270.00  
T53 - INTACT MASONRY  
67 NS0171325 CYLIND  
ER

166.50  
T6 - HEAVYREINCONRDBRK  
68 NS0171329 CYLIND  
ER

810.00  
T6R - HEAVYREINCONRDBRKRES  
69 NS0171344 CYLIND  
ER

535.50  
T7R - BRKRESTSDWKDRIV  
70 NS0171354 CYLIND  
ER

562.50  
T8R - C/B/R/D/RDR/SDWK

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71 NS0171373 SQUARE  
FOOT  
31.50  
T9R - FLAGBLUEZBLKBRKREST  
72 NS0171358 CYLIND  
ER  
54.00  
T91 - CLEANFILL  
73 NS0171360 CYLIND  
ER  
81.00  
T92 - SAND BACKFILL  
74 NS0171365 CYLIND  
ER  
54.00  
T95 - TRUCKFROMSITE  
75 NS0169655 SQUARE  
FOOT  
45.00  
GT-60 - T113W/RECESSPLTS  
76 NS0169656 SQUARE  
FOOT  
36.00  
GT-61 - T112W/RECESSPLTS  
77 NS0169657 SQUARE  
FOOT  
2.00  
GT-62 - RECESSPLATELFITEM  
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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

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The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

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### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

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Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

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### **EQUAL OPPORTUNITY**

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(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the

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Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and Blanket Purchase Agreement 4069066,

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that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); (ii) the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); (iii) the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (iv) the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (v) the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and (vi) the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and

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comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this Appendix A.

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### **terms**

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**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**of**

**CONSTRUCTION CONTRACTS**

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December 7, 2010

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1. Definitions. For purposes of these Standard Terms and Conditions, the following definitions shall apply:

Con Edison-Consolidated Edison Company of New York, Inc.

Contractor-The contractor named on the face of the Con Edison purchase order.

Contract-The contract between Con Edison and Contractor consisting of: (a) the Con Edison purchase order; (b) the relevant Con Edison invitation for bids or request for proposals; (c) these Standard Terms and Conditions; and (d) any and all plans, schedules, specifications, addenda drawings and other documents, to the extent that they are directly or indirectly incorporated by reference in (a), (b) and (c) above. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions all refer to the Contract.

Work-The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

Subcontractor-Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the mailing or delivery by other means of the Con Edison purchase order or other writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's bid contains terms additional to or different from those on which bids were invited by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing by Contractor of a copy of the Con Edison purchase order or such other writing issued by Con Edison (or of another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the purchase order or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

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3. Specifications, Plans, and Drawings

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

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B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the erection site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Purchase Order, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for review and approval prior to their implementation.

### **4. Price and Payment**

A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt by Con Edison's Accounts Payable Department of acceptable invoices. Unless otherwise specified in the purchase order, payment shall be made within 30 days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, to the extent requested by Con Edison, no invoice shall be processed unless and until Contractor Blanket Purchase Agreement 4069066,

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furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record all liens and contain a covenant to defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

B. For unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule, Con Edison shall pay the remaining progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the

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case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a Blanket Purchase Agreement 4069066,

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claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the partial payment then requested reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such invoice has been performed in strict accordance with the Contract Documents and all applicable legal requirements, and (vii) that the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work.

5. Time for Completion. Time is of the essence of this Contract and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule.

Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and Blanket Purchase Agreement 4069066,

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circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially

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approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Con Edison shall not be liable for any additional costs incurred as a result of such delay.

### 7. Safeguards in Work

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test Blanket Purchase Agreement 4069066,

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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendation in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when Con Edison's authorized representative is not present at the site, a Con Edison employee directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact Con Edison's authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to Con Edison's authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison



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against any liability resulting in whole or in part from such failure or neglect.

G.If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8.Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other

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physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof. Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

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### 9.Contractor's Performance

A.Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule. Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B.When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C.Contractor shall perform the Work in accordance with the following:

(a)All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies,

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other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

(b) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(c) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by Blanket Purchase Agreement 4069066,

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local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations. Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison's Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison by Contractor.

### 12. Warranties

A. Contractor warrants the Work for a period of one (1) year from the date of completion and acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(a) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry, and

(b) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet Blanket Purchase Agreement 4069066,

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any and all tests and comply with all performance requirements contained in the Contract.

The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge

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Contractor for the costs and expenses it occurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

### **13. Changes (Including Extra Work)**

A. Con Edison shall have the right at any time, by written notice to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following time and materials rates are approved by Con Edison for Work performed on a time and materials (T & M) basis:

#### **(a) Labor**

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Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in Con Edison's schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by an approved Subcontractor. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(b) Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus ten percent.

#### **(c) Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor

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deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

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E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

14. Labor

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work, to the extent such labor is available.

Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed; and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking

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specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against any and all liability under the Act arising in any way out of services performed by or Con Edison's use of persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or Orange and Rockland Utilities, Inc. employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted sub-contractors shall utilize or otherwise permit any

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former employee of Con Edison or Con Edison's affiliate Orange and Rockland Utilities, Inc., to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or Orange and Rockland Utilities, Inc. if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or Orange and Rockland Utilities, Inc. at any time during the three-year period immediately preceding the employee's separation from Con Edison or Orange and Rockland Utilities, Inc.. For purposes of the preceding sentence, "administration of any contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or Orange and Rockland Utilities, Inc. and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

### **15. Time and Material and Cost Reimbursable Work**

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a time and material or other cost reimbursable basis.

B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative. If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For time and material work Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and Blanket Purchase Agreement 4069066,

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adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a time and material basis shall be subject to the warranties provision of Article 12 above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **16. Claims**

A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs").

B. For each claim for Non-Contract Work, as defined in (A)(i), Contractor must give written notice to Con Edison's designated representative within 5 days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Cost, as defined in (A)(ii), Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act,

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and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison. For each claim for Non-Contract Work, as Blanket Purchase Agreement 4069066,

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defined in (A)(i), these detailed records shall include:

(1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and

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(2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in (A)(ii), these detailed records must include:

(1) The date the Increased Costs were incurred,

(2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,

(3) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs that Contractor claims Con Edison is responsible for.

(4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including but limited to the documentation of costs required by paragraph (C) and the Impact Analysis required by paragraph (D), available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B), or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article, 16 including but limited to the documentation of all costs sought in the claim, as required in paragraph (C), or to timely submit such costs on a weekly basis, as required by paragraph (C), or Blanket Purchase Agreement 4069066,

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to timely submit the Impact Analysis to the extent required by paragraph (D) shall be deemed a

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conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim. Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison and those which the Contract specifically requires Con Edison to obtain. Contractor shall comply with all federal state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison, its trustees, officers, agents and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such

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lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out

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of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Purchase Order.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

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20. Vehicle Spills Contractor is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the conditions is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13, Changes.

23. Inspection and Tests and Correction of Defects

A. Con Edison shall have the right to inspect any and all records of Contractor or its subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Purchase Order and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment,

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Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment,



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material, or part may be located. Con Edison shall have the right to witness any test Contractor or any third party acting on behalf of Contractor conducts relating to the Work, and Contractor shall give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B.No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C.Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to :

(a)halt the continuation of such Work; and

(b)require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(c)perform or have performed by another all tasks stated in section (b) and withhold or recover the cost thereof from Contractor; or

(d)accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24.Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other act or thing done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms.

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### 25.Subcontracting

A.Contractors shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B.Contractors shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor naming both Con Edison and contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison.

26.Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the

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correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Audit. In the event the Contract now provides or in the future is modified to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 32, Suspension or Article 33. Termination for Convenience, Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison and its authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If audit discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, Contractor shall refund to Con Edison an amount equal to such payment.

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28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing.

Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. Contractor shall defend, save harmless and indemnify Con Edison (as well as any owner of the real property on which the project is situated) against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request. If

requested by Con Edison, Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison (as well as any owner of the real property on which the project is situated) from and against such claims and liens. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). If such documents are requested by Con Edison, neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed the cost thereof, if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and

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such bonds shall so provide.

### 31. Other Contractors

A. Contractor shall fully cooperate with other contractors and any Con Edison employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison based on such loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison harmless against any such claim and any loss or liability arising therefrom.

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison) and shall notify Con Edison immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

### 33. Termination for Convenience

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of Blanket Purchase Agreement 4069066,

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termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to

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unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

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34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Con Edison or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's name in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that Con Edison will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

35. Patents, Etc. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison harmless against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any liability arising therefrom, arising out of the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against Con Edison. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and save Con Edison, its trustees, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor, any subcontractor, their agents, servants and employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to this Contract. Contractor expressly agrees that Con Edison may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law

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limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made"

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determinant of coverage and shall be placed with insurance companies acceptable to Con Edison.

A. Employment related insurance.

(a) Workers' Compensation Insurance as required by law.

(b) Employer's Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupation diseases (with a limit of \$1,000,000 per employee).

(c) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$7,500,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$7,500,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Con Edison as an additional insured. There shall be no exclusion for claims by Contractor employees against Con Edison based on injury to Contractor's employees.

C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Con Edison as an additional insured.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison as an additional insured. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name both Contractor and Con Edison as additional insureds and to submit copies of the policies to Con Edison.

Contractor shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Con Edison with at least ten (10) days' written notice prior to the effective date of cancellation of the Blanket Purchase Agreement 4069066,

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insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing work at the site, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be canceled or altered without at least ten (10) days' prior written notice to Con Edison. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Con Edison with notice of cancellation or substantial alteration. Con Edison shall have the right to require Contractor to furnish Con Edison, upon request, with a copy of the insurance policy or policies required under paragraphs A, C, and D hereunder. Contractor agrees that this is an insured contract. The insurance required herein is intended to cover Con Edison for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out

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of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison and notwithstanding any statutory prohibition or limitation of Contractor's indemnification obligation hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Comprehensive (also called Commercial) General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison or both. In addition, in the event of any bodily injury, death, property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor and Con Edison under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison or both. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Blanket Purchase Agreement 4069066,

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Work-Related Injury/Illness")) to Con Edison's Law Department at the following address: Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840.

Certificates of Insurance identifying the Contract shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Administrative Services

38. Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47, "Conflicting Contract Documents"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether

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or not the time has yet arrived for performance thereof), rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33, "Termination for Convenience" shall not apply and Con Edison shall have all rights and remedies provided by law and the Contract. In addition, in such event Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to take

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possession for the purpose of completing the Work of all materials, tools, equipment and appliances at the construction site and to either complete or employ another to complete the Work and hold Contractor liable for any additional cost occasioned thereby, (ii) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison without additional cost or expense to Con Edison, and/or (iii) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. In the event that Contractor demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by Contractor in connection with the Work (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the property of Con Edison, and Con Edison shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. Contractor hereby assigns any and all copyrights in the Materials to Con Edison, and, upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. No Third Party Rights. Unless specifically provided elsewhere herein, nothing contained in this Contract is intended for the benefit of any third parties.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless

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in writing and signed by Con Edison's authorized representative, and any such waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor hereunder any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Contract Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and these Standard Terms and

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Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision or any special conditions incorporated therein expressly refers by number and title to the conflicting or inconsistent clause, in which case the typewritten provision shall take precedence and govern. In the event that any terms of Contractor's proposal are expressly referred to in the contract, in any instance where such terms are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of this Contract are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery or by depositing the notice in the United States Mail, enclosed in a sealed envelope with first class postage thereon, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 40 hereof, Amendments, contains the entire agreement between Con Edison and Contractor. If any article or provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the article and the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. New York Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York.

51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Blanket Purchase Agreement 4069066,

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Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum

A. Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the New York State and United States courts situated within the City of New York or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or Westchester County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

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**Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or

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others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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337858

**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 23

CONTRACTOR : GIANFIA CORPORATION

PURCHASE ORDER NO. : 4070556

BID COMPARISON:

\$1,597,250

\$1,680,000

\$1,934,000

\$1,943,000

\$1,997,000

\$2,125,000

\$2,178,580

\$2,497,700

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COMPASS Complex Service PO  
4070556, 0  
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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES**

Type **COMPASS Complex Service  
PO**

Order **4070556**

Revision **0**

PO Approved Date **12/05/2012**

Revision Date

Buyer **David Blaut**

Supplier: **GIANFIA CORP  
COMPASS 179 BRADY AVE  
HAWTHORNE, NY 10532  
UNITED STATES**

Supplier

Contact:

**RUGGIERO RALPH  
(914) 358-4601**

Key

ConEd

Contact:

**Joseph Satira  
917-363-3792**

**SATIRAJO@CONED.COM  
Ship To: 33-17 47TH AVENUE  
LONG ISLAND CITY, NY 11101  
UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station  
New York, NY 10276-0799  
UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via  
**10806 Immediate N/A N/A**

**Notes:** FARRAGUT SUBSTATION PUMPING PLANT NO. 9

CONTACT:

**RALPH SCHLICHTERNLEIN  
914/376-3175**

Reference Documents: COMPLIANCE AND DISCLOSURE.pdf  
EH&S.docx

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price  
(USD)

Amount

(USD)

1 Needed:

01/29/2013

1 EACH 1492000.0

0

1,492,000.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 209,600.00

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

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LUMPSUM AGREEMENT

Needed:

01/29/2013

1 EACH 1492000.0

0

1,492,000.00

COMPASS Complex Service PO

4070556, 0

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Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price

(USD)

Amount

(USD)

Ship To:

Use the ship-to address at the top of page 1

Total: **1,492,000.00 (USD)**

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**Contract Terms and Conditions**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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### Appendix A - Required Clauses and Certifications

#### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

1. Definitions. The following terms as used herein shall have the meanings stated:

"Con Edison" - Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

"Contractor" - The contractor who is a party to the Contract with Con Edison.

"Contract" - The contract between Con Edison and Contractor consisting of: (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or a Con Edison Standard Purchase Order ("purchase order"); (b) the relevant Con Edison request for quotation; (c) these Standard Terms and Conditions; and (d) any documents or portions thereof incorporated by reference in (a), (b) or (c) above, including, but not limited to, special conditions, specifications, performance requirements, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

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"Work" -The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" -Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2.Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms on which quotations were requested by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3.Specifications, Plans, and Drawings.

A.The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or error which Contractor could have discovered by reasonable diligence and prudence.

B.Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C.Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D.Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

4.Price and Payment.

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A.Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by

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Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security



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which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6.Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update Con Edison on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be Contractor's sole and exclusive remedy for such delay and Con Edison shall not be liable for any damages or additional costs incurred as a result of such delay.

7.Safeguards in Work.

A.Contractors shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B.Contractors shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C.In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D.Contractors shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E.If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee

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identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and Standard Purchase Order 4070556, 0

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance.

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule.

Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall

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be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations.

Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### 10. Con Edison Authority

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

### 12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Standard Purchase Order 4070556, 0

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge

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Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

### **13. Changes (Including Extra Work).**

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Standard Purchase Order 4070556, 0

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### **(i) Labor**

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

#### **(ii) Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

#### **(iii) Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or Standard Purchase Order 4070556, 0

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to

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written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14. Labor.**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4070556, 0

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law (or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B. The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors,

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officers, employees, agents, representatives, successors and assigns from and against any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C. Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D. Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4070556, 0

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15. Time and Material and Cost Reimbursable Work.

A. Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a T&M or other cost reimbursable basis.

B. Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C. For Work performed on a T&M basis, Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D. All work performed on a T&M basis shall be subject to Article 12 (Warranties) above.

E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F. Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G. No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16. Claims.

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A. The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, no claims for damages or additional costs on account of delay shall be permitted.

B. For each claim for Non-Contract Work, as defined in (A)(i) of this Article, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor began to perform such work. The notice must identify such work with particularity,

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the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Costs, as defined in (A)(ii) of this Article, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C. For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison.

(i) For each claim for Non-Contract Work, as defined in (A)(i) of this Article, these detailed records shall include:

(a) The name, title, trade local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed; and

(b) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

(ii) For each claim for Increased Costs, as defined in (A)(ii) of this Article, these detailed records must include:

(a) The date the Increased Costs were incurred;

(b) The name, title, trade local, and number of the workers who performed the work whose costs were increased;

(c) The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; and

(d) The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D. If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E. Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by



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paragraph (B) of this Article, or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available to Con Edison documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, shall be deemed a conclusive and binding determination by the Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17. Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms,

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor is required to assure that all vehicles, including those of Subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

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The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed.

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Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

### **23. Inspection and Tests and Correction of Defects.**

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

(i) halt the continuation of such Work; and

(ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

(iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or

(iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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### **25. Subcontracting.**

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as

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practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

C. If the Contract is on a cost-plus or T&M basis and is in an amount exceeding \$100,000 and Contractor enters into a subcontract with a Subcontractor to whom Contractor is subcontracting all or any portion of the performance to be rendered hereunder on a cost-plus or T&M basis in an amount exceeding \$5,000, immediately after Contractor enters into such subcontract, Contractor shall send a copy of such subcontract to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, N.Y. 10003  
Attention: Purchasing Department  
Section Manager,  
Technology and Strategic Initiatives

26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work Standard Purchase Order 4070556, 0

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison or O&R or any federal, state or local government agency or authority relating to any aspect of this Contract or the Work, and the Contractor shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event the Contract now provides or in the future is revised to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison

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and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents  
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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such  
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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con

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Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4070556, 0

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a)

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prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C.If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4070556, 0

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns harmless from and against any claim, suit or proceeding for infringement of any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison or O&R, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to the Contract (including, but not limited to, O&R). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

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37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with not less than the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Con Edison.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation diseases (with a limit of not less than \$1,000,000 per employee).

(iii) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 per occurrence and, for at least three (3) years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds with respect to the Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by Contractor or any subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. The insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos

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Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, engineering, design, or other professional services, Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the duration of the Contract and for at least three years following final completion and acceptance of the Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional



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insureds.

At least three days prior to commencing Work, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E of this Article and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

To the fullest extent allowed by law, Contractor agrees that this is an insured contract and that the insurance required herein is intended to cover each of Con Edison and O&R for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Standard Purchase Order 4070556, 0

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings)), the Contract price includes all federal, state and local

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sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39. Amendments. No revision or modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40. Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41. Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4070556, 0

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

42. Ownership of Documents and Materials; Ownership of Intangible Property

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire,

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Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for O&R (hereinafter "O&R Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use O&R may make of them, shall be the sole and exclusive property of O&R. To the extent that any of the O&R Materials comprises copyrightable

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

## **Contains Confidential Commercial Information**

Standard Purchase Order 4070556, 0

Proprietary and Confidential Page 40 of 48

cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor under the Contract or any other contract between Con Edison and the Contractor or otherwise, any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor or otherwise, without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any such article, section or paragraph.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York, applicable to agreements made and to be performed in that state.

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51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim

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brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52.Submission to Jurisdiction/Choice of Forum.

A.Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B.Contractor consents to the selection of the state and federal courts situated in the City of New York or in Rockland or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53.Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54.Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

55.Enablement in the Procurement System. In the event Contractor is not presently enabled in the Procurement System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Contractor shall promptly become enabled.

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56.Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, representatives and Subcontractors have not engaged and will not engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such contracts, and in law and equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation

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of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).  
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### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

#### **APPENDIX A - REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply Standard Purchase Order 4070556, 0

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with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

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#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

#### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business

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Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items Standard Purchase Order 4070556, 0

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(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: (i) the

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clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

Appendix A.

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### Gift Policy

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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### Signatures

#### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)



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ATTACHMENT NO. 24

CONTRACTOR : WJL EQUITIES CORP

PURCHASE ORDER NO. : 4078770

BID COMPARISON:

\$7,498,000

\$8,512,105

\$8,700,970

\$10,442,375

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COMPASS Complex Service PO  
4078770, 0

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**Consolidated Edison Company of New York, Inc.**

**4 IRVING PLACE  
NEW YORK, NY 10003  
UNITED STATES**

Type **COMPASS Complex Service**

**PO**

Order **4078770**

Revision **0**

PO Approved Date **12/20/2012**

Revision Date

Buyer **Lisa Presotto**

Supplier: **WJL EQUITIES CORP**

**274 WHITE PLAINS RD STE 7  
EASTCHESTER, NY 10709  
UNITED STATES**

Supplier

Contact:

**BOCHENSKI JEANANN**

**(718) 618-7630**

Key

ConEd

Contact:

**Sara Gherman**

**718-204-4418**

**GHERMANS@CONED.COM**

Ship To: **4 IRVING PLACE**

**NEW YORK, NY 10003**

**UNITED STATES**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**10909 Immediate**

**Notes:** Per Oracle RFQ 26002, WJL Equities Corp. shall furnish supervision, labor, tools and materials to complete the scope of work for the new Astoria Outfall G storm water drainage system.

The scope of work includes the replacement of the existing Outfall G sewer system that collects stormwater from the west portion of the Astoria East Substation across the site (west-east) and discharges at Luyster Creek.

The scope of work includes the removal of the existing system pipes, manholes and catch basins and replacement with new corrugated high performance polypropylene pipes and associated concrete structures. The new drainage system will also include a new 40,000 gallon capacity oil water separator to prevent any accidental release of oil into Luyster creek. The scope of work also includes installation of a 6" high curb around the perimeter of the entire substation as part of the Spill Pollution Control and Countermeasure (SPCC) improvements to the site, and installation of two canopies to house control panels for Oil Water Separator (OWS) and Motorized Operated Valve (MOV) controls as well as all associated conduits.

Expenditure limitation: The maximum expenditure authorized under this purchase contract is \$5,173,750. Con Edison will not be obligated to make payment hereunder in excess of the expenditure limitation and contractor shall not be obligated to continue performance unless and until an increase has been authorized by means of a duly executed modification to this purchase order.

The vendor shall promptly inform Con Edison when commitments made by Con Edison exceed 75% of COMPASS Complex Service PO

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the aforesaid expenditure limitation.

Price: \$5,173,750

Construction Schedule: 270 Calendar Days

This purchase order will be performed in accordance with & incorporates by reference the following:

- All documents referenced in RFQ 26002, Project No. 23832-10, and all associated Specifications, Contract Drawings and all other referenced drawings, and pictures.
- Con Edison Astoria Guidance No. 100 & 200
- Storm Water Pollution Prevention Plan (SWPPP) Requirements
- Special Conditions dated 9/13/2012
- Clarifications – dated 10/19/2012 and all documents referenced therein
- Con Edison's Standard Terms & Conditions of Construction Contracts dated 7/1/2012
- Con Edison's Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 06/10/2008
- Con Edison EH&S Requirements
- Contractor's submitted Compliance & Exception, Offer & Disclosure Forms dated 10/10/12 (No Exceptions Taken)

No contractor can perform any work before a hasp is approved by EH&S.

Reference Documents: Attachment 1 - Bid Worksheet - WJL 20121023.pdf

All prices and amounts on this order are expressed in USD

Line /

Pay

Item

Part Number / Description Supplier Part# Delivery Date/Time Quantity UOM Unit Price (USD)

Amount

(USD)

1 Needed:

09/30/2013

1 EACH 5173750.0

0

5,173,750.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 258,687.50

Retainage Rate: 10%

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

09/30/2013

1 EACH 5173750.0

0

5,173,750.00

Ship To:

Use the ship-to address at the top of page 1

Total: **5,173,750.00 (USD)**

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**Terms and Conditions**

**Standard Terms**

**Standard Terms and Conditions for Construction Contracts**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

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**FOR**

**CONSTRUCTION CONTRACTS**

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July 1, 2012

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### **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS**

1. Definitions. The following terms as used herein shall have the meanings stated:

"Con Edison" - Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for work to be performed for Con Edison or its affiliate Orange and Rockland Utilities, Inc. ("O&R").

"Contractor" - The contractor who is a party to the Contract with Con Edison.

"Contract" - The contract between Con Edison and Contractor consisting of: (a) a Blanket Purchase Agreement ("BPA") or Contract Purchase Agreement ("CPA") and/or a Con Edison Standard Purchase Order ("purchase order"); (b) the relevant Con Edison request for quotation; (c) these Standard Terms and Conditions; and (d) any documents or portions thereof incorporated by reference in (a), (b) or (c) above, including, but not limited to, special conditions, specifications, performance requirements, plans and drawings. The words "hereof," "herein," "hereto" and "hereunder" as used in these Standard Terms and Conditions shall be deemed to refer to the Contract.

"Work" - The project contemplated by the Contract and all labor and supervision; construction materials, equipment, tools and other aids to construction; equipment, materials and structures to be installed; and other things of any nature necessary or proper for the completion of the project, whether or not expressly specified herein.

"Subcontractor" - Any company or person, other than an employee of Contractor, that furnishes any of the Work on behalf of Contractor.

2. Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Contractor of the Contract in Oracle E-Business Suite iSupplier (the "Procurement System") or, if Contractor is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Contractor's offer; provided, however, that if Contractor's offer contains terms additional to or different from the terms on which quotations were requested by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgement electronically by Contractor of the Contract in the Procurement System or, if Contractor is not

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enabled in the Procurement System, by the signing by Contractor of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Contractor's acceptance thereof), or Contractor's commencement or continuation of the Work following its receipt of the Contract or such other writing, such Work signifying Contractor's acceptance of the terms thereof.

3. Specifications, Plans, and Drawings.

A. The Work shall be performed in strict accordance with the Contract specifications, plans, and drawings. No deviation is permitted unless approved in advance in writing by Con Edison. The specifications, plans, and drawings and all other documents which are part of the Contract are supplementary to each other. Anything called for by any one of such documents shall be required to the same extent as if called for by all of them, and the Work shall be completed in every detail whether or not every item is specifically mentioned. If there should be a conflict between the drawings and the writings that comprise the plans and specifications, the writings shall govern unless upon notice thereof Con Edison directs otherwise in writing.

Contractor shall carefully review all of the contract documents. Contractor shall promptly submit in writing to Con Edison whenever discovered, whether before or after award, any inconsistency, ambiguity, or error between documents or within a document. Contractor shall abide by the written direction of Con Edison's authorized representative with respect to such matters, which direction shall be final and binding.

Contractor waives any claim for extra compensation based on an inconsistency, ambiguity, or

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error which Contractor could have discovered by reasonable diligence and prudence.

B. Con Edison may furnish to Contractor any additional plans, drawings, specifications or other documents which it considers

necessary to illustrate or explain the Work in further detail, and Contractor shall comply with the requirements of all such documents.

C. Contractor shall, throughout the time during which the Work is being performed, keep at the work site available for inspection by Con Edison one complete and current set of the Contract documents, including, but not limited to, the Contract plans, specifications, and drawings, any additional documents furnished by Con Edison, and all shop and work drawings approved by Con Edison.

D. Where required by the Contract, Contractor shall submit designated documents, such as drawings and process procedures, for review and approval by or on behalf of Con Edison. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Con Edison for such review and approval prior to their implementation.

### **4. Price and Payment.**

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A. Unless expressly stated to the contrary herein, all prices are firm and not subject to increase. All payment periods, including discount periods, shall begin upon receipt of proper invoices by Con Edison's Accounts Payable Department. Unless otherwise specified in the Contract, payment shall be made within thirty (30) days of receipt of each invoice. Payments by mail shall be deemed made when deposited in the mail. Notwithstanding anything to the contrary herein, no invoice submitted for a partial or progress payment shall be processed unless and until Contractor

furnishes to Con Edison a Contractor Affidavit – Partial Release And Waiver of Lien and for each subcontractor, a Subcontractor Affidavit – Partial Release of Lien, duly executed and delivered by Contractor and its Subcontractors at issue, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein, and, with respect to Work covered by or included within the invoice, waive, release and discharge claims and liens, contain a covenant to pay and release of record, or otherwise discharge of record, all liens and contain a covenant to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated), from and against such claims and liens and any related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor).

No invoice submitted for a final payment shall be processed unless and until: (i) Contractor has fully performed all the Work to Con Edison's satisfaction; (ii) Contractor has delivered to Con Edison all warranties, manuals, operating instructions, drawings, and all other documents required by the Contract; and (iii) Contractor has submitted documents sufficient to satisfy Con Edison that all the Work has been properly performed, that payment is due to Contractor, and that all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work have been fully paid, or that they will be paid promptly from monies received from the final payment. The documents required together with the invoice for final payment shall include a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each

Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable. Such documents shall, among other things, state that each statement set forth in paragraph (H) of this Article is true and correct concerning the invoice and the amount requested therein and, with respect to the Work, waive, release, and discharge all claims and liens to the extent permitted by law, contain a covenant to pay and release of record, or otherwise discharge of record, all liens, and contain a covenant to defend, indemnify, and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and any owner of the real property on which the project is situated from and against all such claims and liens and related costs and expenses. Such documents shall be in a form reasonably satisfactory to Con Edison and shall in all respects be

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read and interpreted to be consistent with Section 34 of the New York Lien Law (or its successor).

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B. Unless otherwise provided in the Contract, for unit price Work involving layouts, Contractor shall submit invoices upon completion of layouts or layout parts. For other unit price Work, invoices shall be submitted monthly. For all unit price Work, the judgment of Con Edison as to the quantity of Work completed and whether or not it is acceptable shall be conclusive.

C. For lump sum Work, Contractor shall render progress payment invoices monthly unless stated otherwise in the purchase order. Each invoice shall be based on an estimate, certified by Contractor and approved by Con Edison, of the physical Work performed during the period stated in the purchase order or, if none is stated, during the preceding calendar month. In preparing estimates, Contractor shall include up to 75% of the cost of conforming materials delivered onto the site but not yet physically incorporated into the Work. As additional security for the proper performance of the Contract, Con Edison will retain ten percent (10%) of the amount of each invoice until fifty percent (50%) of the Work is completed. Thereafter, if the Work is progressing satisfactorily and on schedule and Contractor is in compliance with all of its obligations hereunder, Con Edison shall pay the remaining invoices for progress payments in full. The amount previously retained will be paid to Contractor following completion and acceptance of the entire Work. The judgment of Con Edison as to the value of the Work completed, whether it is on schedule and whether it is acceptable shall be conclusive.

D. Con Edison shall have the right at any time to withhold from any payment which may be or become due under the Contract such amount as may reasonably appear necessary to it to compensate Con Edison for any actual or prospective loss due to Work which is defective or does not conform to Contract requirements, actual or prospective failure of Contractor to complete performance of the Work, or any other failure of Contractor to perform any of its obligations under the Contract or when it reasonably appears to Con Edison that Contractor has previously been overpaid. Con Edison shall be entitled to retain any and all amounts so withheld until Contractor has, in Con Edison's judgment, either performed the obligation or obligations in question or furnished security which Con Edison deems adequate for such performance or, in the case of withholding for overpayment, until an audit of Contractor's work or documentation is completed and the proper payment is determined.

E. Con Edison at any time may, after notifying Contractor in writing, pay directly any unpaid claims against Contractor based on the Work, and in so doing Con Edison shall be conclusively deemed to be acting as Contractor's agent. Any payment made by Con Edison to discharge a claim against Contractor shall be treated as a payment made under the Contract from Con Edison to Contractor.

F. Con Edison shall not be liable to Contractor for interest on any late payments unless expressly provided for herein. If for any reason Con Edison is in arrears in payment(s) hereunder, payment(s) made shall be applied by Contractor to any and all principal sum(s) due before being applied to any interest that may be due thereon pursuant to any express provision therefor in the Contract or otherwise.

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G. Except to the extent specified in a written reservation of rights, the acceptance by Contractor of final payment shall be and shall operate as a release of all claims against Con Edison and of all liability of Con Edison to Contractor for things done or furnished in connection with the Work and for every act and neglect of Con Edison and others for whom Con Edison may be responsible relating to or arising out of the Work. However, no payment, final or otherwise, shall operate to release Contractor or its sureties from the obligations under this Contract or any performance or payment bond.

H. Contractor shall submit invoices in a form reasonably acceptable to Con Edison. Each invoice shall constitute a representation by Contractor that (i) the payment requested therein reflects Work performed and costs incurred by Contractor on account of such Work, (ii) the materials, supplies and equipment for which such invoice is being submitted have been installed or incorporated in the Work or have been stored at the project site or at such off-site storage locations as shall have been approved in writing by Con Edison; provided, however, that Con Edison shall not be obligated to pay or advance monies for materials stored off-site, unless approved in advance and in writing by Con Edison, (iii) the materials, supplies and equipment, if stored off-site, have been properly insured and stored in a "bonded" warehouse and are insured in accordance with this Contract and, if stored at the project site, are insured in accordance with the provisions of this Contract, (iv) the materials, supplies and equipment are not subject to any liens or encumbrances, (v) no mechanic's, laborer's, vendor's, materialman's or other liens or payment bond claims have been filed in connection with the Work for any of the labor, materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) all Subcontractors who performed or furnished labor, materials, supplies, or equipment for the Work for which payment is requested or for prior Work have been fully paid, or that

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they will be paid promptly from monies received from such invoice, (vii) the Work which is the subject of such invoice has been performed in strict accordance with the Contract documents and all applicable legal requirements, and (viii) the amount of the partial payment for which the invoice is submitted, when added to the sum of all previous payments made under prior invoices, does not exceed that portion of the price under the Contract which is allocable to the portion of the Work that has actually been completed on or before the date of such invoice and that the remainder of the price under the Contract (as the same may have been adjusted hereunder) is sufficient to pay in full the costs necessary to perform and complete the Work. Upon Con Edison's request and as a condition precedent to payment, Contractor shall provide supporting documentation that is satisfactory to Con Edison to substantiate the representations set forth in this paragraph.

5. Time for Completion. TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every portion thereof for which a certain length of time is fixed for performance. Unless otherwise specified, Contractor shall start the Work at the construction site within ten (10) days after it receives a written Notice to Proceed from Con Edison and shall complete the Work and the various parts thereof within the time or times specified in the Contract schedule. Contractor shall prosecute the Work regularly, diligently and without interruption at such rate of progress as will ensure completion within the specified time, and shall furnish properly skilled workmen and materials, tools, and equipment in numbers and amounts sufficient to accomplish this. Contractor agrees that the time or times specified for completion of the Work and of any part thereof are reasonable, taking into consideration all facts and circumstances. Work specified by the Contract to be performed after regular hours or on Saturdays, Sundays or legal holidays and Work performed at such times as a result of conditions in a permit or because of local regulations or to adhere to or regain the rate of progress required by Con Edison shall be performed without additional expense to Con Edison. If, in the opinion of Con Edison, Contractor falls behind schedule, Con Edison shall have the right to require contractor, at no additional cost to Con Edison, to increase its labor force or days or hours of work, to work overtime or increase the number of shifts, to use additional equipment or other construction aids, or to take such

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other steps as may be necessary to ensure completion of the Work on schedule. Receipt and acceptance by Con Edison of revised schedules from Contractor during the Work shall not be deemed a waiver of the schedule initially approved.

6. Excusable Delay. Contractor shall be excused any delay in completion of the Work arising from a cause beyond its control which it could not with the exercise of due diligence have either foreseen or avoided, including act of governmental authority, act of God, extraordinary weather conditions, flood, accident such as fire or explosion not due to the negligence of Contractor, strike which is not the result of an unfair labor practice or other unlawful activity by Contractor, riot, failure of public transportation facilities, inability of Con Edison to provide access due to plant malfunctions, and inability to perform caused solely by Con Edison's act or failure to act in breach of an express obligation under the Contract. Delay in Contractor's receipt of subcontracted supplies or services for reasons beyond the control of the Subcontractor shall not be excusable delay hereunder to the extent that the supplies or services are available to Contractor from another source. The unavailability of sufficient, qualified labor to perform the Work shall not be excusable delay hereunder unless the unavailability is caused by a strike which is not the result of an unfair labor practice or other unlawful activity by Contractor. Contractor shall give written notice and full particulars of the cause of any delay within 48 hours after its occurrence and thereafter shall update Con Edison on a bi-weekly basis. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be Contractor's sole and exclusive remedy for such delay and Con Edison shall not be liable for any damages or additional costs incurred as a result of such delay.

7. Safeguards in Work.

A. Contractor shall provide and maintain at its own expense safe and sufficient entrance and exit ways, walkways, platforms, barricades, warning lights, scaffolds, ladders, runways for concrete carriers, hoists and all equipment, apparatus and appliances necessary or proper for carrying on the Work safely; shall not load any of the foregoing items or any part of any structure or equipment with a weight that will make it unsafe; shall make and keep the place of Work and the ways and approaches thereto well lighted, safe and free from avoidable danger, taking into account, without limitation, local conditions; and shall mark any faulty items "unsafe" until repaired or replaced.

B. Contractor shall provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing are not explicitly called for. Contractor shall support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, fixtures and other public or private property that may be encountered or endangered in the prosecution of the Work.

C. In accordance with the rest of this Article 7 and without limitation thereof, Contractor shall test



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all areas, excavations, openings, manholes, vaults and boxes, for an adequate supply of oxygen and for any and all toxic, harmful or combustible gases or fumes or other dangerous substances before and during the course of the Work and shall provide all the necessary equipment, including, but not limited to, all oxygen deficiency and gas testing apparatus required for such tests.

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D. Contractor shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. Contractor shall cause all equipment and structures, the place of Work and the ways and approaches thereto to meet the requirements of all public authorities. Contractor shall comply with the requirements of and recommendations in the latest edition of the "Manual of Accident Prevention in Construction," published by The Associated General Contractors of America, to the extent that such provisions are not inconsistent with other provisions of the Contract or applicable laws or regulations. Contractor shall maintain an accurate record of all cases of death, occupational disease or injury requiring medical attention or causing loss of time from work arising in connection with performance of the Work.

E. If in the opinion of Con Edison's authorized representative, Contractor's work practices or conditions created by Contractor are unsafe or fail to comply with applicable laws or regulations, Con Edison may halt the work until such practices and conditions are corrected. Contractor shall not be entitled to any additional costs or time for performance due to such work stoppage. If, when the Con Edison authorized representative is not present at the site, a Con Edison employee (or O&R employee for Work ordered for O&R) directs Contractor to discontinue an operation because it may be unsafe or illegal, Contractor shall immediately halt the questioned operation and, if the Contractor disagrees with the employee, shall contact the Con Edison authorized representative for instructions. Contractor shall obtain the employee's name and employee identification number and report this information to the Con Edison authorized representative.

F. Contractor shall be responsible for any failure or neglect on its or its Subcontractor's part to perform the obligations contained in this article, and shall defend and indemnify Con Edison and its affiliates (including, but not limited to, O&R) against any loss, liability, damage or expense resulting in whole or in part from such failure or neglect.

G. If the Work involves pipeline facilities for the transportation of gas, hazardous liquids or carbon dioxide or a liquefied natural gas facility subject to Part 192, 193 or 195 of Title 49 of the Code of Federal Regulations (CFR), Contractor shall comply, and shall require its employees to comply, with the drug and alcohol testing requirements of 49 CFR Part 199. Contractor shall maintain and follow written anti-drug and alcohol misuse plans and shall provide the testing, education, and training required by the Regulations. Contractor shall allow access to its property and records concerning the plans and their implementation to Con Edison, O&R and their representatives, to the Department of Transportation Administrator, and to representatives of federal or state authorities having jurisdiction for the purposes of monitoring compliance with these requirements.

8. Knowledge of Work Conditions and Requirements. Contractor represents that it has visited and examined the site of the Work and satisfied itself as to the general and local conditions, particularly those relating to transportation, handling and storage of materials, availability of labor, water, drainage, power, roads, weather, ground and other physical conditions at the site, and as to all other matters which could affect the Work or the cost thereof.

Contractor also acknowledges that it has examined the specifications, drawings, and other Contract documents and

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has satisfied itself as to the requirements of the Work, and has seen or had an opportunity to ask about all conditions which may affect the Work, including equipment or structures in place or to be in place, or work being or to be performed, which could interfere with the uninterrupted performance of the Work. Contractor agrees that its entry into the Contract has not been induced either wholly or in part by any promises, representations or statements on behalf of Con Edison other than those set forth in the Contract, and that any failure of Contractor to examine the Work site, Contract documents or all other available information shall be at its own risk. Contractor further represents that the price set forth in the Contract has been determined with due regard by Contractor to all such conditions and requirements affecting the Work, as well as the difficulties and delays incident to work of the nature contemplated hereby, and agrees that no claim for any increase in such price shall be made except as specifically provided in the Contract.

9. Contractor's Performance.

A. Contractor shall perform in good workmanlike manner and in accordance with best accepted practices in

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the industry all the Work specified or reasonably implied in the Contract, in accordance with its terms and the directions of Con Edison and its authorized representatives as any may be given from time to time. Contractor's performance shall include, except as otherwise specifically stated in the Contract, everything requisite and necessary to complete the Work properly, notwithstanding the fact that not every item involved is specifically mentioned, including, but not limited to all materials, labor, tools, equipment, apparatus, water, lighting, heating, power, transportation, superintendence, temporary construction, site security and all other services and facilities of every nature necessary or appropriate for the execution of the Work on schedule.

Details which are not specified in the Contract shall be performed by Contractor at no extra cost if such details are within the general description of the Work.

B. When work is performed outside of Contractor's own premises, Contractor must provide at all times an on-site representative with full authority to act for Contractor. The representative must be able to read, write, and thoroughly understand both English and any other languages spoken by persons performing work for Contractor and must be able to effectively communicate with those persons in their own language or languages. In addition, Contractor's representative must ensure that labeling, log book entries, completion of forms and all other tasks requiring a proficiency in English are performed clearly and correctly. The continuation of the individual selected by Contractor in this role shall be subject to the continuing approval of Con Edison.

C. Contractor shall perform the Work in accordance with the following:

(i) All equipment, tools, other construction aids and materials utilized by Contractor shall be of high quality and in good working order. Contractor shall submit material safety data sheets (MSDS) for all chemical and hazardous substances used in the Work. If, in the opinion of Con Edison, any of Contractor's equipment, supplies, tools, other construction aids or materials are unsafe or inadequate, Contractor shall remove such items from the site immediately and replace them with safe and adequate substitutes at Contractor's expense. Contractor shall be fully and solely responsible for and shall safeguard its equipment, tools, supplies, other construction aids and materials at all times. Contractor shall provide adequate storage for all such items used in connection with the Work.

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(ii) The use of public roadways and properties for the parking of employee vehicles, construction equipment, receiving and placement shall be in accordance with the applicable laws and ordinances.

Access to all underground facilities, as for example through Con Edison, municipal and telephone company manholes, shall be maintained and allowed during the entire performance of the Work. Adjacent private properties shall not be entered or used for any such purpose without the written consent of the property owners.

(iii) Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus, and no material or other obstruction shall be placed, parked or stored within fifteen (15) feet of any hydrant or stop valve (or a greater distance if required by local law, rule or regulation). Contractor shall comply fully with all local rules and regulations relative to fire protection, shall keep the structure and premises free from burnable trash and debris, and shall exercise every precaution against fire. This shall include, but not be limited to, posting a fire watch, with appropriate fire fighting equipment, during all welding, burning, stress relief and other heating operations.

Contractor shall assure that the fire watch is informed of the site fire control procedures and remains posted during breakfast, lunch and dinner periods and until one hour after such heating operations have stopped.

### **10. Con Edison Authority**

A. Con Edison shall have the authority to decide any and all questions which arise in connection with the Work, and Con Edison's decisions shall be conclusive and final. Con Edison shall be the final judge of the meaning and intent of the Contract and all provisions thereof. Con Edison shall have the authority to conclusively resolve any disagreements which may arise between Contractor and any other contractor.

B. Con Edison shall have the right to maintain a representative at the construction site. Such representative may, on request, give Contractor reasonable assistance in interpreting the Contract drawings, specifications and plans, but such assistance shall not relieve Contractor of any duties (including, without limitation, those of giving notice to or securing the approval of Con Edison) arising under the Contract.

11. Estimated Quantities. Whenever estimated quantities of Work to be done on a unit-price basis are shown in the

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Contract, differences between the actual number of units of Work encountered and the estimated quantities of units shall not result in an increase or decrease in the unit prices or provide the basis for any claim against Con Edison or O&R by Contractor.

### 12. Warranties.

A. Contractor warrants the Work for a period of three (3) years from the date of completion and Standard Purchase Order 4078770, 0

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acceptance of all Work, unless a longer period is specified elsewhere in the Contract or in an applicable municipal code or regulation, in which case the longer period shall apply:

(i) as to services, that they shall be rendered competently and by qualified personnel in accordance with the best accepted practices in the industry and comply strictly with all specifications and

performance requirements contained in the Contract; and

(ii) as to materials, equipment, structures and other things, that they shall be new and free from defects in title, material, workmanship and design, conform strictly to all applicable specifications, and be suitable for their intended use. Contractor further warrants that the Work shall meet any and all tests and comply strictly with all specifications and performance requirements contained in the Contract. The warranty of good title shall be unlimited in time.

B. In the event any part or all of the Work fails to satisfy any of these warranties, upon written notice thereof from Con Edison, Contractor shall, at no cost to Con Edison, promptly repair, replace, or reperform the defective Work, as directed by Con Edison, and do whatever else is necessary to cause the Work to satisfy all of the aforesaid warranties. All work repaired, replaced or reperformed under the provisions of this Article shall be subject anew to this Article with the warranty period commencing upon completion of the repair, replacement, or reperformance. If Contractor fails to correct any defective Work as aforesaid promptly after being notified thereof by Con Edison, then Con Edison may, at its option, either correct the defective work and charge Contractor for the costs and expenses it incurs in so doing or secure an equitable reduction in the Contract price based on its retention of the defective Work. Any defective parts removed in connection with repair or replacement shall be disposed of by Contractor at its expense.

C. In addition to making the foregoing warranties, Contractor agrees to obtain, for the benefit of Con Edison, from any and all Subcontractors hereunder, the same warranties as those required of Contractor under this Article and not to accept any warranties which are inferior in any respect to those required under this Article.

D. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

### 13. Changes (Including Extra Work).

A. Con Edison shall have the right at any time, by written notice (electronically or in print form) to Contractor and without notice to any of Contractor's sureties, to direct changes in the Work, including direction to do extra work or work outside of normal hours (when such work is not already the responsibility of Contractor under the Contract) or to delete part of the Work. If any such change causes an increase or decrease in the cost or time required for performance hereunder, an equitable adjustment shall be made in the Contract price or schedule, or both, as follows: If the change involves work of the kind for which unit prices are contained in the Contract, such work shall be paid for at those prices unless Con Edison at its discretion determines not to use such unit Standard Purchase Order 4078770, 0

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prices and so notifies Contractor prior to the start of the changed work. For work for which no unit price is established or for which Con Edison has determined not to apply the unit prices, the parties shall endeavor to agree on a lump sum price for the change. If the change is not defined well enough for a fixed price, or if there is not enough time to negotiate one, or if the parties do not agree on one, Contractor shall perform the change on a time-and-materials ("T&M") basis at rates for labor, equipment and materials approved by Con Edison. In the case of deletion of any portion of the work for which no unit price is established, the Contract price shall be reduced by the decrease in Contractor's cost of performance and profit thereon.

B. The following rates are approved by Con Edison for Work performed on a T&M basis:

#### (i) Labor

Contractor will be compensated for each hour performed at the straight and premium time rates (as applicable) specified in the applicable schedule of rates. With respect to Work ordered for Con Edison, the applicable schedule of rates will be the Con Edison schedule of rates entitled "New York City and Westchester County Labor Rates for Time and Materials Work" or "Maintenance

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Agreement Labor Rates -- New York City and Westchester County," as applicable, in effect at the time the Work is performed, except that an additional 10% will be paid for the straight time portion of labor performed by one approved Subcontractor. With respect to Work ordered for O&R, the applicable rates will be the rates agreed to in the Contract. The labor of superintendents, non-working foremen, timekeepers and clerical employees is not compensable. This paragraph shall not be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

### **(ii)Materials**

Contractor will be compensated for all materials used for the Work at the actual net cost plus 10%. Contractor shall furnish Con Edison with the invoices evidencing the purchase of such materials (and any other back-up documentation).

### **(iii)Equipment**

Contractor will be compensated for equipment employed in the Work at 70% of the rates, including operating costs, in effect at the time the Work is performed, in the "Rental Rate Blue Book for Construction Equipment" or

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the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable.

All rates are based on 8 hours per day, 40 hours per week, 176 hours per month and 22 working days per 30 day period. The rate resulting in the lowest cost to Con Edison for the employment of the equipment in the Work will be used. Operating costs will only be paid for hours during which equipment is actually being used in the performance of the Work.

Each unit of equipment or tool with a value at the time of use of less than \$500 will be considered included in the labor rate and will not be separately compensable.

C. Contractor shall not perform any changes in the Work, including extra work, except pursuant to written direction from Con Edison's representative authorized to make changes expressly and unmistakably indicating his intention to change the Work. In the event adjustments for such changes are not agreed upon promptly, Contractor shall nevertheless proceed diligently to effect the changes at the time it is directed to do so by Con Edison.

D. In the absence of a written direction described in the preceding paragraph C, if Contractor deems any directive, whether oral or written, by Con Edison's authorized representative to be a change in the Work, Contractor shall nevertheless comply therewith but shall within five days give written notice as described in Article 16, Claims, and comply with the requirements thereof.

E. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Con Edison unless evidenced by a Contract modification or change order signed and issued by Con Edison. Contractor shall not have the right to make changes in the Work without the prior written approval of Con Edison.

F. Prices agreed upon for, or applicable to, changes (including extra work), include all impacts of the changes on the Work, including, but not limited to, delay, loss of productivity, demobilization, remobilization and idle time, and Contractor shall have no other claim for other effects on the Work due to such changes.

### **14.Labor.**

A. Contractor shall, unless otherwise specifically stated herein, provide all labor required to fully complete the Work. This shall include all specialized workers that are required by the nature of the Work. Unless otherwise specifically provided herein, the costs of all labor are included in the Contract price. With respect to Work ordered for Con Edison, unless otherwise agreed to by Con Edison, Contractor shall employ on Work at the construction site only union labor from building trades locals having jurisdiction over the Work to the extent such labor is available. Where Contractor employs workers on sites where a permit to use or open a street (including excavating the street) is required and New York City Administrative Code Section 19-142, or its successor, (or a similar law, regulation, or code pertaining to sites located outside of New York City ("Similar Standard Purchase Order 4078770, 0

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Local Law")) is applicable, Contractor agrees that, pursuant to and in furtherance of the requirements of New York City Administrative Code Section 19-142, or its successor, (or the requirements of the Similar Local Law) and the terms and conditions of the permit: none but competent workers, skilled in the work required of them, shall be employed thereon; the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the Comptroller of the City of New York pursuant to Section 220 of the New York State Labor Law

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(or as established by such other fiscal officer, as specified in Section 220 of the New York State Labor Law, for workers on permitted sites located outside of New York City to which a Similar Local Law applies), paid to those so employed, and Contractor shall pay that prevailing wage to workers so employed. These obligations of Contractor shall apply even though Con Edison may have obtained the permit. Contractor agrees to defend, save harmless and indemnify Con Edison, and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability arising in any way out of Contractor's failure to comply with the foregoing provisions of this paragraph. Whenever Contractor knows or believes that any actual or potential labor dispute is delaying or threatening to delay the timely performance of the Work, Contractor shall immediately give Con Edison notice of the dispute, including all relevant information concerning the dispute. If such notice is given orally, Contractor shall confirm it in writing within 24 hours. In the event that any labor dispute adversely affects the timely and efficient performance of the Work, Contractor shall exercise all rights and utilize all remedies available under applicable collective bargaining agreements and applicable federal and state laws to resolve the dispute and end the adverse effect on the Work, including but not limited to, seeking an injunction and filing an unfair labor practice charge.

B.The Immigration Reform and Control Act of 1986 Pub. L. No. 99-603 (the "Act") makes it illegal for an employer to hire or employ an illegal alien. The Act also makes it a legal requirement for employers to establish an employment verification system which includes the employer's checking specified documents to establish both an individual's identity and legal authorization to work. Contractor represents and covenants that Contractor has complied and will comply with all the requirements of the Act with respect to all persons assigned or employed by Contractor in the performance of the Work. Contractor agrees to defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against any and all liability under the Act arising in any way out of services performed by, or Con Edison's use of, persons furnished by Contractor.

C.Contractor shall not employ any Con Edison or O&R employee to perform any Work without the prior written permission of Con Edison.

D.Further, neither Contractor nor any of its permitted subcontractors shall utilize or otherwise permit any former employee of Con Edison or O&R to render any services hereunder of any nature for or on behalf of Contractor or the permitted subcontractors (as an employee or consultant or otherwise) within five years of such former employee's separation from Con Edison or O&R if such former employee was engaged or involved in the solicitation, negotiation, procurement, placement or administration of any contract, agreement or purchase order for or on behalf of Con Edison or O&R at any time during the three-year period immediately preceding the employee's separation from Con Edison or O&R. For purposes of the preceding sentence, "administration of any Standard Purchase Order 4078770, 0

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contract, agreement or purchase order" shall mean engaging in any activity relating to oversight or management of any contract between Con Edison or O&R and Contractor including, but not limited to, the review, approval or payment of any invoices relating to any such contract, agreement or purchase order or the supervision of employees engaged in such activities. Engaging in or supervising employees engaged in purely clerical functions such as filing, data entry or processing previously approved invoices for payment shall not be deemed "administration of any contract, agreement or purchase order".

15.Time and Material and Cost Reimbursable Work.

A.Con Edison shall have the right to generally supervise, direct, control and approve the extent and character of Work done on a T&M or other cost reimbursable basis.

B.Work performed on a T&M basis shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless Contractor obtains the prior written consent of Con Edison's duly authorized representative.

If Contractor should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by Contractor without recourse to Con Edison.

C.For Work performed on a T&M basis, Contractor shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift

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worked. These reports are to be submitted to the Con Edison site representative for approval (subject to future audit and adjustment if found to be in error). Con Edison shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

D.All work performed on a T&M basis shall be subject to Article 12 (Warranties) above.

E.The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

F.Whenever the Contractor or any permitted subcontractor performs Work hereunder its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government issued name and photo identification.

G.No obligation of Con Edison to pay any agreed upon labor rates to Contractor for any time and material or cost reimbursable work shall be construed to affect Contractor's obligations to pay its employees in accordance with applicable law and the requirements of the Contract.

16.Claims.

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A.The only claims that may be made by Contractor are claims for (i) providing services or materials beyond the scope of the Contract that are not covered by a written and signed change order (hereafter "Non-Contract Work"), and (ii) the increased cost of performing Contract Work caused by Con Edison's breach of the Contract (hereafter "Increased Costs"), except that, as set forth in Article 6, no claims for damages or additional costs on account of delay shall be permitted.

B.For each claim for Non-Contract Work, as defined in (A)(i) of this Article, Contractor must give written notice to Con Edison's designated representative within five (5) days of when Contractor began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Con Edison representative alleged to have ordered such work. For each claim for Increased Costs, as defined in (A)(ii) of this Article, Contractor must give written notice to Con Edison's designated representative within 5 days of Contractor's discovery of Con Edison's breach. The notice must identify the breach with the following particularity: for an act of Con Edison identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Con Edison, identify the specific action Contractor believes Con Edison should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Con Edison, identify the representation alleged to be incorrect by document, page,

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section, and clause, describe the fact or condition misrepresented, and provide the date Contractor learned of the misrepresentation.

C.For claims for which Contractor has given timely notice, Contractor must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Con Edison upon request. Ten days after submitting the notice required by paragraph (B) of this Article, Contractor must begin submitting weekly detailed itemizations of such costs to Con Edison.

(i)For each claim for Non-Contract Work, as defined in (A)(i) of this Article, these detailed records shall include:

(a)The name, title, trade local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed; and

(b)The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work and from whom purchased or rented.

(ii)For each claim for Increased Costs, as defined in (A)(ii) of this Article, these detailed records must include:

(a)The date the Increased Costs were incurred;

(b)The name, title, trade local, and number of the workers who performed the work whose costs were increased;

(c)The price in Contractor's bid for the performance of the work that had its cost increased, the actual cost to Contractor to perform such work, and the amount of the Increased Costs for which Contractor claims Con Edison is responsible; and

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(d)The nature and quantity of any materials, plant, and equipment whose cost was increased by Con Edison's act, omission, or misrepresentation.

D.If any part of any claim permitted by this Article is based upon delay, impact, interference, interruption, disruption, loss of productivity or any other time- or schedule-related impact of any nature for which Contractor asserts Con Edison is responsible ("Alleged Delay"), then Contractor, in addition to its other obligations under this Article, shall, on projects in which any form of a critical path method ("CPM") schedule is required by the Contract, provide to Con Edison a reasonably detailed written narrative description of the Alleged Delay and its alleged time and costs impacts, a CPM schedule "fragnet" or similar document illustrating the schedule impact, if any, on the actual project schedule, and other records and documents, if any, explaining the alleged cost

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impact (collectively, an "Impact Analysis"). (As used herein, a "fragnet" means a sequence of new activities and/or activity revisions that are proposed to be added to the existing schedule and that demonstrate the influence or impact of delay and the method for incorporating delays and impacts into the schedule as they are encountered). Each Impact Analysis shall be submitted to Con Edison within ten (10) days of the after the start of the Alleged Delay to which it relates. Each Impact Analysis shall demonstrate the estimated time impact based on the claimed events of the Alleged Delay, the date the Alleged Delay began, the status of the project at that point in time, and show how the project schedule critical path was impacted by the Alleged Delay.

E.Contractor shall make all books, records and accounts relating to the claims permitted by this Article, including, but not limited to, the documentation of costs required by paragraph (C) of this Article and the Impact Analysis required by paragraph (D) of this Article, available for inspection and audit by Con Edison and its representatives at all times, including after the termination or expiration of the Contract. Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available for inspection and audit by Con Edison and its representatives all books, records and accounts relating to the claims permitted by this Article 16, including, but not limited to, the documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, or to timely submit the Impact Analysis to the extent required by paragraph (D) of this Article shall be deemed a conclusive and binding determination by Contractor that neither the Contractor nor any of its subcontractors have provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither Contractor nor any of its subcontractors have had their costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

Strict compliance with the applicable requirements of this Article 16 is an express condition precedent to Contractor's right to assert any claim permitted by this Article 16.

F.Contractor's failure to provide timely notice of a claim, as required by paragraph (B) of this Article, or to collect, segregate, maintain, and make available to Con Edison documentation of all costs sought in the claim, as required in paragraph (C) of this Article, or to timely submit such costs on a weekly basis, as required by paragraph (C) of this Article, shall be deemed a conclusive and binding determination by the Contractor that neither the Contractor nor any Subcontractor has provided any services or materials beyond the scope of the Contract not covered by a written and signed change order and that neither the Contractor nor any Subcontractor has

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had its costs increased by a breach of the Contract by Con Edison, and such failure shall be deemed a waiver of the claim.

17.Permits, Codes, Laws and Regulations. Contractor shall obtain and pay for all permits and licenses required for the Work except those which can be obtained only by Con Edison or O&R and those which the Contract specifically requires Con Edison or O&R to obtain. Contractor shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes insofar as they relate to the Work (including but not limited to the giving of notices and the payment of fees) and shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R) and their respective, trustees, directors, officers, agents, representatives and employees against all liability arising out of Contractor's failure to do so. Contractor shall promptly examine all Contract documents and notify Con Edison in writing if it appears that any of them may fail to conform to any such code, law, ordinance, rule or regulation. Contractor shall provide Con Edison with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with the obligations

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imposed by this Article, including, but not limited to, the signed, sworn, payrolls or transcripts thereof setting forth the name and address of each workman, laborer or mechanic, the occupations worked, the hourly wage paid, and the supplements paid or provided, to the extent required by Section 220(3-a)(e) of the New York State Labor Law and the provisions it references, and a copy of any payment bond required by Section 137 of the New York State Finance Law. Without limiting the generality of the foregoing, Contractor agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in Appendix A hereto, a copy of which has been furnished or made available to Contractor, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors to contractors to the Federal Government.

18. Quality Assurance/Quality Control. Contractor shall establish and maintain a quality assurance/quality control program which shall include procedures for continuous control of all construction and comprehensive inspection and testing of all items of Work, including any Work performed by Subcontractors, so as to ensure complete conformance to the Contract with respect to materials, workmanship, construction, finish, functional performance, and identification. The program established by Contractor shall comply with any quality assurance/quality control requirements incorporated in the Contract.

19. Protection of Persons, Work and Property.

A. The risk of loss or damage to the Work prior to full completion of all Work hereunder and final acceptance thereof by Con Edison shall be borne by Contractor.

B. In the course of performing the Contract, Contractor shall at all times exercise every reasonable precaution to protect persons and property and items of Work. Contractor shall at its own expense design, furnish, and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Con Edison. Contractor shall provide and maintain in good working order at all times an adequate, approved system for promptly extinguishing fires. Fire alarms, Standard Purchase Order 4078770, 0

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extinguishing equipment and water lines shall be continually inspected by Contractor and shall at all times be accessible and ready for immediate use.

C. Contractor shall, while on or about the site of Work, observe and comply with all fire, safety, hazard, "No Smoking", and all other rules and regulations heretofore or hereafter prescribed by Con Edison. Safety hats shall be worn at all times in the Work area by Contractor's employees. Whenever the Contractor or any permitted subcontractor performs Work hereunder, its employees and consultants are required to have available for review by Con Edison a Contractor (or a subcontractor) or government-issued name and photo identification.

D. Contractor shall, at no additional cost to Con Edison, comply with all reasonable requests of Con Edison to enclose or specially protect Work, property or persons. If Con Edison determines that Work, property or persons are not adequately protected after any such requests, then it may, without prejudice to any other rights it may have hereunder or under applicable law, order an immediate suspension of the Work or take such steps as it deems necessary to protect Work, property or persons. The cost of such steps shall be charged to Contractor and may be deducted from any payments due Contractor, and Contractor shall not be entitled to be compensated for any costs of its own arising from such suspension.

E. Contractor shall promptly report in writing to Con Edison all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, Contractor shall immediately report the accident by telephone to Con Edison.

F. Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service to any persons who may be injured in the course of performance of the Work and shall have standing arrangements for the removal and hospital treatment of such persons. If any claim is made by any person against Contractor or any other contractor on account of any accident, Contractor shall promptly report it in writing to Con Edison, giving full details of the claim.

G. Contractor will not be permitted to perform any field work until it has submitted to Con Edison and received approval of a site-specific health, safety, and environmental plan, which shall address all hazards that may be encountered and shall conform to any and all requirements stated in the Contract.

H. If in the reasonable opinion of Contractor greater precautions than those required herein or directed by Con Edison are advisable, Contractor shall implement such precautions and advise Con Edison thereof. In the event of an emergency threatening injury to persons or damage to



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property Contractor shall take all necessary action immediately and shall promptly notify Con Edison thereof.

20. Vehicle Spills. Contractor is required to assure that all vehicles, including those of Subcontractors and suppliers, used in the performance of work for Con Edison are maintained in good working condition and are not leaking any Standard Purchase Order 4078770, 0

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fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify a Con Edison authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Contractor shall be required to reimburse Con Edison and O&R for all costs associated with the cleanup of leaks and spills.

21. Maintenance of Work Site. Contractor shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the Work or the work of any other contractors; clean up and remove on a daily basis and more frequently if directed by the Con Edison representative all refuse, rubbish, scrap materials, and debris so that at all times the Work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures, including any foundations thereof. If, in the opinion of Con Edison, Contractor has failed to comply with any provisions of this Article, Con Edison may order any or all of the Work suspended until the condition is corrected, and all costs associated therewith shall be borne by Contractor.

22. Subsurface Conditions Found Different. Con Edison shall not be obliged to show any subsurface conditions on any drawing, plans or specifications it furnishes Contractor, and if none are shown that is not to be interpreted as indicating that there are none of significance to the Work. Should Contractor encounter subsurface conditions at the site materially different from any of the subsurface conditions that are shown on the drawings, plans or specifications, it shall immediately give notice to Con Edison of such conditions before the conditions are disturbed. Con Edison will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the specifications it will make any changes necessary. Any increase or decrease in the cost of or time required for performance resulting from such changes shall be dealt with in accordance with the provisions of Article 13 (Changes (Including Extra Work)) and Article 6 (Excusable Delay).

23. Inspection and Tests and Correction of Defects.

A. Con Edison shall have the right to inspect any and all records of Contractor or its Subcontractors whenever Con Edison believes that this is necessary to assure it that the Work is proceeding and will proceed in full accordance with the requirements of the Contract and on schedule. In addition, all parts of the Work shall, throughout the time of performance of the Contract, be subject to inspection by Con Edison. Con Edison shall be the final judge of the quality and acceptability of the Work, the materials used therein, and the processes of manufacture and methods of construction employed in connection therewith. Contractor shall provide Con Edison's representatives with safe and proper facilities for access to and inspection of the Work, both at the construction site and at any plant or other source of supply where any equipment, material, or part may be located. Con Edison shall have the right to witness any test Contractor, or any third party acting on behalf of Contractor, conducts relating to the Work, and Contractor shall Standard Purchase Order 4078770, 0

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give Con Edison advance written notice thereof. Con Edison shall have the right to require Contractor to perform additional tests at reasonable times and places. The cost of any additional tests required by Con Edison shall be borne by Con Edison unless they disclose a defect or nonconformity in the Work, in which case the cost shall be borne by Contractor.

B. No inspection, failure to inspect, or waiver of inspection on the part of Con Edison or anyone acting on its behalf shall relieve Contractor of its duty to complete the Work in full accordance with the requirements of the Contract.

C. Should it appear to Con Edison at any time prior to the completion and acceptance of the entire Work, whether as a result of the aforementioned inspections and tests or otherwise, that any part of the Work is not suitable or of good quality or fails to conform to Contract requirements, Con Edison shall have the option to:

(i) halt the continuation of such Work; and

(ii) require Contractor, at Contractor's sole expense and within such reasonable time as may be fixed by Con Edison, to reconstruct, replace or correct the applicable Work and remedy any damage to property of Con Edison and others occasioned by such Work or the materials, methods or processes employed in connection therewith; or

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(iii) perform or have performed by another all tasks stated in subparagraph (ii) above and withhold or recover the cost thereof from Contractor; or  
(iv) accept the unsuitable or nonconforming Work and reduce the Contract price by an amount Con Edison deems equitable.

In any event, Contractor shall reimburse Con Edison for all costs attributable to delays in the Work or additional work performed by other contractors to the extent they arise from Contractor's unacceptable Work.

24. Effect of Con Edison Approval. Contractor's obligations under this Contract shall not be affected by the grant to, or the exercise or non-exercise by, Con Edison of rights to inspect, test, review or approve Contractor's performance of the Work, including, without limitation, documents such as drawings, written procedures or daily reports. Any approval by Con Edison of any materials, workmanship, equipment, documents or other acts or things done or furnished or proposed by Contractor shall be construed merely as indicating that at the time of the approval Con Edison was not aware of any reason for objecting, and no such approval shall release Contractor from full responsibility for the accurate and complete performance of the Contract in accordance with its terms. Any failure of a Con Edison representative to object to any failure by Contractor to comply with any or all of the requirements of the Contract, even if apparent or discoverable, shall not be effective as a waiver of such requirements or as an acceptance of the non-compliance.

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25. Subcontracting.

A. Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Con Edison as to the tasks to be subcontracted and the Subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials. Contractor may utilize the services of specialty Subcontractors if they are customarily used in the industry on the work subcontracted, provided Con Edison has first approved the proposed Subcontractor. Contractor shall, as soon as practicable after execution of the Contract, notify Con Edison in writing of any Subcontractor proposed to be employed on the Work. Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting.

B. Contractor, shall, notwithstanding Con Edison's approval, be as fully responsible for the acts and omissions of its Subcontractors and their agents and representatives as it is for its own acts and omission. Should any approved Subcontractor fail to perform to the satisfaction of Con Edison, Con Edison shall have the right to rescind its approval and to require the Work subcontracted to be performed by Contractor or by another approved Subcontractor. Nothing contained herein shall create any contractual rights in any Subcontractor against Con Edison. Contractor shall cause all subcontracts applicable to the Work to contain provisions which require the Subcontractor to provide the same insurance coverage as is required of Contractor, and comply with the other requirements relating to insurance as are required of Contractor hereunder, including, but not limited to, naming Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. and Contractor as additional insureds. Subcontracts shall provide for Contractor the same rights against the Subcontractor as Con Edison or O&R has hereunder against Contractor and shall expressly state that such provisions shall also be for the benefit of Con Edison and O&R.

C. If the Contract is on a cost-plus or T&M basis and is in an amount exceeding \$100,000 and Contractor enters into a subcontract with a Subcontractor to whom Contractor is subcontracting all or any portion of the performance to be rendered hereunder on a cost-plus or T&M basis in an amount exceeding \$5,000, immediately after Contractor enters into such subcontract, Contractor shall send a copy of such subcontract to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, N.Y. 10003

Attention: Purchasing Department

Section Manager,

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26. Title to Materials and Completed Work. Contractor shall obtain and maintain title to all materials, equipment and structures to be installed by it in the Work, free from all liens, claims and encumbrances. Title to all Work

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completed or in the course of construction and to all materials, equipment and structures as to which any payment has been made by Con Edison shall be in Con Edison, but this shall not affect Con Edison's right to require the

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correction of defective or non-conforming Work nor relieve Contractor of any other obligation arising under the Contract.

27. Investigation and Audit. Contractor hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison or O&R or any federal, state or local government agency or authority relating to any aspect of this Contract or the Work, and the Contractor shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event the Contract now provides or in the future is revised to provide that the Work or any part thereof shall be done on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), T&M basis or similar basis, or if payment on such basis is to be made under Article 32 (Suspension), or Article 33 (Termination for Convenience) of these Standard Terms and Conditions), Contractor shall maintain, and in the event there are subcontracts on any of such bases shall cause the Subcontractor(s) to maintain, detailed books, records and accounts covering costs incurred in connection with such Work or, as applicable, time spent and materials used. Contractor shall make or cause to be made said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority and their respective authorized representatives during the term of this Contract and for a period of six (6) years after final payment hereunder. If an investigation, audit, or inquiry discloses that Con Edison has paid Contractor for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used or for any costs that were improperly charged, Contractor shall refund to Con Edison an amount equal to such payment.

28. Con Edison's Performance. Con Edison shall perform any action required of it by the Contract in order to enable Contractor to perform hereunder. Failure by Con Edison to substantially perform any such obligation shall not give rise to an action for damages by Contractor, in contract or in tort, or entitle Contractor to cancel or rescind the Contract or abandon performance hereunder. Unexcused nonperformance by Con Edison shall, however, relieve Contractor of its obligation to perform hereunder to the extent that it prevents Contractor from performing. Nonperformance by Con Edison shall be excused where caused by an act or omission of Contractor.

29. Liens. To the fullest extent permitted by law, Contractor shall defend, save harmless and indemnify Con Edison and its affiliates (including, but not limited to, O&R), and as any owner of the real property on which the project is situated, from and against all claims, liens or attachments growing out of the demands of Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, in connection with the Work, including all losses, liabilities, fees, costs and expenses (including attorneys' fees and legal costs) arising out of or in connection therewith. Contractor shall deliver the Work to Con Edison free and clear of all liens, claims, and encumbrances, and shall furnish Con Edison a certificate to that effect upon request.

Contractor shall furnish Con Edison with a Contractor Affidavit – Final Full Release And Waiver of Lien document and, for each Subcontractor, a Subcontractor Affidavit – Final Full Release And Waiver of Lien document, duly executed and delivered by Contractor and its Subcontractors, as applicable, with the presentation of Contractor's final invoice for payment. Such documents shall, among other things, waive, release and discharge all claims and liens relating to the Work, the project or the Contract and defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R), and any owner of the real property on which the project is situated, from and against such claims and liens and any related losses, liabilities, fees, costs and expenses. Such documents

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shall be in a form reasonably satisfactory to Con Edison and shall in all respects be read and interpreted consistent with Section 34 of the New York Lien Law (or its successor). Neither the final payment, nor payment of any part of the retained percentage shall become due until Contractor furnishes such documents. Con Edison may withhold from payment an amount sufficient to protect Con Edison against any claims, liens or attachments. Any liens arising from Contractor's Subcontractors, mechanics, workmen, materialmen and furnishers of machinery, equipment, tools, or supplies, including commissary, must be fully bonded or otherwise discharged by Contractor in accordance with applicable law, within five (5) days of the filing of the lien. If Contractor fails to bond or otherwise discharge such lien, Con Edison may take any action it deems appropriate to discharge or remove such lien, including, but not limited to, payment directly to the lienor (in which case the payment to the lienor shall be deemed payment to Contractor under the Contract), or discharge of such lien by depositing monies into court or filing of a lien discharge bond, and withhold or deduct the amount of such deposit(s) and all other applicable costs and expenses from any payment otherwise due to Contractor or, if no payment is due, Contractor shall pay to Con Edison all losses, liability, damages, costs, fees and expenses incurred by Con Edison as a result of the Contractor's failure to discharge such a lien, including, but not limited to, any premiums for a discharge bond and attorneys' fees. If any lien remains unsatisfied after final payment has been made to Contractor, Contractor shall refund to Con Edison all monies that Con Edison may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

30. Bonds. Contractor shall furnish performance or payment bonds, or both, that may be required by law or

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requested at any time by Con Edison (including, but not limited to, any payment bonds that are required by Section 137 of the New York State Finance Law when a municipality issues a permit that is subject to Section 220 of the Labor Law). Any and all such bonds shall be in a form and in an amount, and shall have a surety or sureties, acceptable to any governmental authority having jurisdiction and to Con Edison. The premiums for all such bonds which are required by law (including, but not limited to, any payment bonds required by Section 137 of the New York State Finance Law) or which have been requested by Con Edison prior to the time of the execution of the Contract or which are required by the Contract itself shall be deemed to be included in the Contract price, and no additional compensation shall be payable to Contractor with respect to such bonds. If a bond is required by Con Edison after the Contract is executed, Contractor shall be reimbursed for the cost thereof, without any markup if it has been previously approved by Con Edison, upon submission by Contractor of satisfactory evidence of payment therefor. No change order, extension of the time for completion, failure to enforce any rights arising under the Contract, or other act or forbearance of Con Edison shall operate to release or discharge any surety or sureties under any such bonds, and such bonds shall so provide.

31. Other Contractors.

A. Contractor shall fully cooperate with other contractors and any Con Edison or O&R employees at or near the site of the Work and carefully coordinate its own work with that performed by them. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Con Edison or O&R.

B. If any other contractor or any Subcontractor shall suffer loss or damage through acts or neglect on the part of Contractor, Contractor shall use its best efforts to settle the matter with such other contractor or Subcontractor. If such other contractor or Subcontractor asserts any claim against Con Edison or any of its affiliates (including, but not limited to, O&R) based on such Standard Purchase Order 4078770, 0

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loss or damage, Con Edison shall notify Contractor, and Contractor shall indemnify and save Con Edison and its affiliates (including, but not limited to, O&R) harmless from and against any such claim and any loss, liability, damage or expense arising therefrom or in connection therewith (including attorneys' fees and legal costs).

C. Contractor and its Subcontractors shall keep informed of the progress and the details of work of other Con Edison contractors at the Work site (and of Con Edison or O&R) and shall notify Con Edison (or O&R, for Work ordered by O&R) immediately of lack of progress or defective workmanship on the part of any of them (or of Con Edison or O&R). Failure by Contractor to keep informed of other work in progress at the site or to give notice of lack of progress or defective workmanship by others shall be deemed an acceptance by Contractor of such other work insofar as it relates to or affects its own Work.

32. Suspension. Con Edison shall have the right, for its convenience, to suspend all or part of Contractor's performance hereunder at any time by written notice. Contractor shall, as soon as possible, resume any suspended Work when so directed by Con Edison. The time for performance shall be extended for a period equal to the delay caused by such suspension. If such suspension continues beyond a reasonable period, Contractor shall be entitled to be reimbursed for any out-of-pocket costs (exclusive of field and home office overhead or costs resulting from loss of efficiency or Work done out of sequence) which it establishes to the reasonable satisfaction of Con Edison (obtained through audit if required by Con Edison) were incurred by it thereafter solely by reason of such suspension, provided, however, that such entitlement is conditioned upon Contractor's notifying Con Edison in writing within fifteen (15) days after the beginning of such suspension that additional costs will or may be incurred thereby and upon Contractor's making claim therefor in writing within thirty (30) days after Con Edison's notice to resume work. In no event shall Contractor be entitled to a profit on such costs.

33. Termination for Convenience.

A. Con Edison may, for any reason whatsoever, including its own convenience, terminate the Contract, in whole or in part, upon ten (10) days' written notice to Contractor without liability except as expressly stated in this Article. Upon receipt of such termination notice, Contractor shall: (1) cease performance of the Work to the extent specified by Con Edison in the notice of termination and thereafter do only such Work with respect to the terminated portion of the Contract as may be necessary to preserve and protect Work already performed or in progress; (2) place no further orders or subcontracts for services, materials or equipment, except as may be necessary for completion of such portion of the Work as is not terminated; and (3) procure cancellation of all existing orders and subcontracts to the extent they relate to the performance of Work terminated (except to the extent that Con Edison requests that any such order or subcontract be assigned to Con Edison, in which case Contractor shall assign such designated orders and subcontracts to Con Edison without additional cost or expense to Con Edison). Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement

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stating, for each order and subcontract (i) the original price of the order and subcontract and the price of each change order thereunder together with a description of the change order, (ii) the amount that Contractor paid under the order and subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the order and subcontract and each Standard Purchase Order 4078770, 0

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change order thereunder.

B. In the event of such termination, Con Edison shall, in full discharge of all its obligations to Contractor, pay termination charges as follows: With respect to lump sum contracts, a percentage of the Contract price reflecting the percentage of Work performed prior to the effective date of the termination; with respect to cost reimbursable contracts, allowable costs incurred prior to the effective date of termination plus an equitable portion of any fixed fee provided for in the Contract; with respect to time-and-materials contracts, for time expended and materials purchased and paid for prior to the effective date of the termination at the Contract rates; and with respect to unit price contracts, for units of Work completed prior to the effective date of termination at Contract rates. In addition, regardless of the type of contract, Con Edison shall reimburse Contractor for any unavoidable out-of-pocket costs of cancellation payments to Subcontractors resulting directly from the termination which Con Edison agrees in writing were not taken account of in the aforementioned payments. Upon Con Edison's request, Contractor shall promptly provide Con Edison with a sworn statement itemizing these cancellation costs and promptly furnish to Con Edison all applicable contractual documents to which the cancellation costs relate or under which the cancellation costs arise. Contractor shall not be entitled to be compensated for any other costs arising from the termination, direct or indirect (including, without limitation, field and home office overhead and accountants' or attorneys' fees), whether or not based on Work performed prior to the effective date of termination. All termination payments shall be less (a) prior amounts paid on account of the Contract price and (b) the value of any salvage available to Contractor with respect to any material, structures or equipment purchased or manufactured prior to cancellation. Contractor shall use its best efforts to minimize termination charges. All termination charges shall be subject to audit by Con Edison.

C. If payments on account of the Contract price made prior to the effective date of termination exceed the above termination charges, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve either party of any obligation which may arise out of Work performed prior to termination, including, but not limited to, Contractor's obligation to correct defective work and all warranty obligations. In no event shall Con Edison be liable to Contractor for damages of any kind whatsoever arising out of the termination, whether based on lost profit, unrecovered or increased home office or other overhead resulting from termination-related reductions in workload or in direct costs, lost opportunities to obtain other jobs, or otherwise.

34. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, information regarding locations of facilities, and other information furnished by Con Edison or O&R or originally furnished or prepared by Contractor or its subcontractors in connection with the Work shall, except to the extent indicated in writing by Con Edison (or O&R, with respect to Work ordered for O&R), be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Work, and be delivered or returned to Con Edison upon completion of such performance. Contractor shall not use Con Edison's or O&R's name, or otherwise identify Con Edison or O&R, in connection with any advertisement or any announcement regarding the Work or for any other purpose without obtaining Con Edison's prior written permission or, with respect to O&R, O&R's prior written permission. Contractor acknowledges that its violation of the provisions of this article may result in irreparable harm to Con Edison and O&R, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, Contractor agrees that either or both of Con Standard Purchase Order 4078770, 0

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Edison and O&R will be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

35. Infringement. If Contractor, in performing this Contract employs, constructs or provides any design, process, material, tool or equipment covered by a patent, copyright, trademark or other proprietary right, Contractor shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. Contractor shall indemnify and hold Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns harmless from and against any claim, suit or proceeding for infringement of

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any patent, copyright, trademark or other proprietary right brought against Con Edison, and any loss, liability, damage or expense or relating thereto, resulting from the use or manufacture of any designs, processes, materials, tools or equipment provided to Con Edison or O&R or employed in the performance of the Work. Contractor shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses in connection therewith, including compensation of experts and counsel, and all damages and costs awarded against an indemnified party. Con Edison shall notify Contractor of any such claim, suit or proceeding in writing and give Contractor authority, information and assistance (at Contractor's expense) for the defense thereof. In the event that the use of anything furnished or constructed hereunder is enjoined, Contractor shall promptly, at its own expense and at its option, either (a) procure for Con Edison (or O&R with respect to Work performed for O&R) the right to continue using it or (b) with the approval of Con Edison, (i) replace it with a noninfringing equivalent or (ii) modify it so it becomes noninfringing.

36. Indemnification. To the fullest extent allowed by law, Contractor agrees to defend, indemnify and hold harmless Con Edison and its affiliates (including, but not limited to, O&R) and their respective trustees, directors, officers, employees, agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons, or damage to property, including the property of Con Edison or O&R, and statutory or administrative fines, penalties or forfeitures resulting in whole or in part from, or connected with, the performance of the Work by Contractor any subcontractor or their respective agents, servants, employees or representatives, and including claims, loss, damage and liability arising from the partial or sole negligence of Con Edison or non-parties to the Contract (including, but not limited to, O&R). Contractor expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Contractor in connection with claims against Con Edison or O&R for injury and/or death to Contractor's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison or O&R against Contractor.

37. Insurance. Contractor shall procure and maintain the following insurance (and such other limits and additional insurance as may be required by the Contract) at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with not less than the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Con Edison.

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A. Employment related insurance.

(i) Workers' Compensation Insurance as required by law.

(ii) Employer's Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupation diseases (with a limit of not less than \$1,000,000 per employee).

(iii) Where applicable, insurance required by the United States Longshoremen's and harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$7,500,000 per occurrence for bodily injury or death and not less than \$5,000,000 per occurrence for property damage or a combined single limit of not less than \$7,500,000 per occurrence and, for at least three (3) years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without Con Edison's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds with respect to the Work and completed operations. There shall be no exclusion for claims by Contractor's or any Subcontractor's employees against Con Edison or O&R based on injury to Contractor's or any Subcontractor's employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State, City of New York, or other municipal permit, the insurance policy or policies shall also name the State of New York, the City of New York or such other municipality as additional insureds. At Con Edison's request, and without any additional cost to Con Edison, the insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the Work hereunder involves or impacts such adjoining properties.

C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired

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automobiles used by Contractor or any subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.

D. Where the Work involves the use of aircraft, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, used by Contractor or any Subcontractors, with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. The insurance policy shall name Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insureds.

E. For the asbestos abatement portion and the lead abatement portion of the Work, Asbestos Standard Purchase Order 4078770, 0

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Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than \$7,500,000 for bodily injury or death and property damage. Each insurance policy shall name Con Edison, O&R and Consolidated Edison, Inc. as additional insureds. Where the abatement work is to be performed by a subcontractor, Contractor shall require the subcontractor to name Contractor, Con Edison, O&R and Consolidated Edison, Inc. as additional insureds and to submit copies of the policies to Con Edison.

F. In the event the Work includes any architectural, engineering, design, or other professional services, Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the duration of the Contract and for at least three years following final completion and acceptance of the Work.

Contractor shall, and shall cause any subcontractor to, furnish Con Edison with written notice at least ten (10) days prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds required hereunder shall be primary coverage and non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

At least three days prior to commencing Work, Contractor shall furnish Con Edison with copies of the policies specified in paragraphs B and E of this Article and Certificate(s) of Insurance covering all required insurance and signed by the insurer or its authorized representative certifying that the required insurance has been obtained. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Con Edison is an additional insured with respect to all coverages enumerated in paragraphs B, D and E of this Article. Con Edison shall have the right, upon request, to require Contractor to furnish Con Edison, with a copy of the insurance policy or policies required under paragraphs A, C, D and F of this Article.

To the fullest extent allowed by law, Contractor agrees that this is an insured contract and that the insurance required herein is intended to cover each of Con Edison and O&R for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Contractor shall be deemed to have assumed tort liability for any injury to any employee of Contractor or Con Edison arising out of the performance of the Work, including injury caused by the partial or sole negligence of Con Edison Standard Purchase Order 4078770, 0

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Edison and notwithstanding any statutory prohibition or limitation of Contractor's contractual obligations hereunder.

In the event of any bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with, the Work, Contractor, in accordance with the provisions of the Commercial General Liability Insurance policies, shall promptly and in writing notify the insurer(s) issuing such policies, regardless of the employment status of the person who sustains or on whose behalf the injury, death, damage, accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event that any claim, allegation, suit, or action is made against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc.. In addition, in the event of any bodily injury, death, and property damage, or other accident or harm that is in any way connected with the Work and arises out of, relates to, or is in any way connected with, the use, operation, alteration, repair, or maintenance (including, without limitation, cleaning or painting) of (i) an automobile, truck, or any other kind of land-based vehicle, or (ii) a ship, vessel, boat, barge or other water craft, Contractor, in accordance with the provisions of its Comprehensive Automobile Liability Insurance policies and/or its marine liability insurance (including, but not limited to, Protection and Indemnity Insurance), as applicable, shall promptly and in writing notify the insurer(s) issuing such policies of the same regardless of the employment status of the person who sustains or on whose behalf the injury, death or damage,

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accident or harm is alleged. Such notice shall inform such insurer(s) that the notice is being provided on behalf of Contractor and on behalf of Con Edison, O&R and Consolidated Edison, Inc. and that it is intended to invoke the coverage of the policies to protect the interests and preserve the rights of Contractor, Con Edison, O&R and Consolidated Edison, Inc. under the policies in the event of any claim, allegation, suit, or action against Contractor, Con Edison, O&R and/or Consolidated Edison, Inc. The notices required by this paragraph shall be in addition to notices that Contractor provides to its insurers issuing policies of Workers' Compensation Insurance, Employer's Liability Insurance, or coverage required by the United States Longshoremen's and Harbor Workers' Act, the Federal Liability Act, or the Jones Act. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Contractor shall provide a copy of such written notice (including a copy of any incident or accident report and, if applicable, the form C-2 ("Employer's Report Of Work-Related Injury/Illness")), as follows: if the accident or incident occurs in connection with Work for Con Edison, copies shall be sent to : Consolidated Edison Company of New York, Inc., Law Department, 4 Irving Place, New York, N.Y. 10003, Attention: General Litigation-Insurance Specialist, Room 1840; and if the accident or incident occurs in connection with Work for O&R, copies shall be sent to: Orange and Rockland Utilities, Inc., One Bluehill Plaza, Pearl River, NY 10965, Attention: Legal Services, 4th Floor.

Certificates of Insurance identifying the Contract shall be sent to:

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Consolidated Edison Company of New York, Inc.

4 Irving Place, 17th Floor

New York, N.Y. 10003

Attention:Purchasing Department

Supplier Management Group (SMG)

38.Taxes. Except as may be expressly provided to the contrary elsewhere in the Contract (and notwithstanding the provisions of Article 47 (Conflicting Documents; Headings"), the Contract price includes all federal, state and local sales, use, excise, occupational, franchise, property, gross receipts, privilege and other taxes that may be applicable to the Work, and all federal, state and local taxes, contributions, and premiums imposed upon or measured by Contractor's and any Subcontractor's payrolls.

39.Amendments. No revision or modification of or amendment to the Contract shall be valid or binding unless in writing and signed by an authorized representative of Con Edison.

40.Assignment. Contractor shall not assign the Contract or any or all of its rights under the Contract without the written consent of Con Edison, and any assignment made without such consent shall be void. In the event of an assignment of the Contract, Contractor shall not be relieved of its obligations under the Contract, but shall be jointly and severally liable with the assignee for all of the Contractor's obligations under the Contract. If Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that the right of the assignee to any monies due or to become due to Contractor shall be subject to any and all claims based on services rendered or omitted or materials supplied or not supplied in the performance of the Work.

41.Cancellation for Default. In the event Contractor is in default of any of its obligations under the Contract, Con Edison shall have the right, on written notice to Contractor and any sureties, to cancel the Contract for default. Contractor shall be deemed to be in default hereunder if it is in default of any of its obligations under the Contract or makes any statement or performs any act indicating that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof) or rejects the Contract under the United States Bankruptcy Code or ceases to pay its debts promptly or becomes insolvent or commences or has commenced against it any insolvency proceeding or finds its affairs placed in the hands of a receiver, trustee, or assignee for the benefit of creditors. In the event of cancellation for default hereunder, Article 33 (Termination for Convenience), shall not apply, and Con Edison shall have all rights and remedies provided by law and the Contract. Without intending to limit the generality of the foregoing, it is specifically understood and agreed that Con Edison shall have the right, at its election and without prejudice to any other remedies, (i) to exclude Contractor from the construction site, or any portion of the construction site, (ii) to complete or employ a third party to complete the Work or any portion of the Work, and hold Contractor liable for any additional cost occasioned thereby, (iii) to take possession of any or all materials, tools, equipment and appliances at the construction site for the purpose of completing the Work or any portion of the Work, (iv) to compel Contractor to assign any or all subcontracts with Subcontractors to Con Edison Standard Purchase Order 4078770, 0

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without additional cost or expense to Con Edison, and/or (v) to negotiate new contractual arrangements with Subcontractors for such Subcontractors to complete all or any portion of the work on terms agreeable to Con Edison. Upon Con Edison's request, Contractor shall promptly provide Con Edison with Contractor's sworn statement stating, for each subcontract with each Subcontractor (i) the original price of the subcontract and the price of each



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change order thereunder together with a description of each such change order, (ii) the amount that Contractor paid under the subcontract and each change order thereunder, and (iii) the amount of retention held by Contractor under the subcontract and each change order thereunder. Following cancellation of the Contract for default, Contractor shall not be entitled to any further payment until the work has been fully completed and accepted, and Con Edison may retain from any money otherwise due Contractor for services rendered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Contractor's default. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between the Contractor and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Contractor and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Contractor demonstrates that a cancellation of the Contract and any other contract cancelled for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 33, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

### **42. Ownership of Documents and Materials; Ownership of Intangible Property**

A. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for Con Edison (hereinafter, "Con Edison Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Con Edison may make of them, shall be the sole and exclusive property of Con Edison. To the extent that any of the Con Edison Materials comprises copyrightable subject matter, such Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the Con Edison Materials is not deemed a work made for hire, Contractor hereby assigns to Con Edison such Con Edison Materials, without any requirement of further consideration, all right, title, and interest in and to such Con Edison Materials and the copyrights relating thereto. To the extent that any of the Con Edison Materials does not comprise copyrightable subject matter, Contractor hereby assigns to Con Edison, without any requirement of further consideration, all right, title, and interest in and to all such Con Edison Materials and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall execute any documents that Con Edison deems necessary to effectuate such assignments.

B. With respect to all documents and materials, including, but not limited to, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, computer programs and source code created or otherwise prepared by Contractor in connection with Work ordered for O&R (hereinafter "O&R Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use O&R may make of them, shall be the sole and exclusive property of O&R. To the extent that any of the O&R Materials comprises copyrightable subject matter, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

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subject matter, such O&R Materials and the copyrights relating thereto shall be considered "works made for hire" under the copyright law of the United States, and the equivalent of works made for hire as recognized under the copyright laws of other countries. To the extent that any of the O&R Materials is not deemed a work made for hire, Contractor hereby assigns to O&R such O&R Materials, without any requirement of further consideration, all right, title, and interest in and to such O&R Materials and the copyrights relating thereto. To the extent that any of the O&R Materials does not comprise copyrightable subject matter, Contractor hereby assigns to O&R, without any requirement of further consideration, all right, title, and interest in and to all such O&R Materials and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any documents that O&R deems necessary to effectuate such assignments.

C. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with any services ordered or performed for Con Edison (collectively, the "Con Edison Work Product") shall belong solely to Con Edison. Contractor shall disclose immediately to Con Edison all Con Edison Work Product upon its conception. Contractor hereby assigns to Con Edison, at the time of conception of the Con Edison Work Product and without any requirement of further consideration, all right, title and interest in and to all such Con Edison Work Product and all intellectual property rights related thereto. Upon the request of Con Edison, Contractor shall

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execute any and all documents that Con Edison deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated into the Con Edison Work Product any intellectual property that was created prior to the effective date of the Contract that is not owned by Con Edison or O&R ("Prior Work") and such Prior Work is specifically identified in writing to Con Edison, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to Con Edison, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the Con Edison Work Product, and to make modifications thereto. Contractor shall not cause or permit the disclosure to any third party of any material information concerning the Con Edison Work Product without the express prior written consent of Con Edison, which consent may be withheld in the sole and unfettered discretion of Con Edison.

D. All inventions, concepts, techniques, processes, improvements, discoveries and ideas, whether patentable or not, conceived by Contractor, its officers, employees, agents or subcontractors in connection with services ordered or performed for O&R, (collectively, the "O&R Work Product") shall belong solely to O&R. Contractor shall disclose immediately to O&R all O&R Work Product upon its conception. Contractor hereby assigns to O&R, at the time of conception of the O&R Work Product and without any requirement of further consideration, all right, title and interest in and to all such O&R Work Product and all intellectual property rights related thereto. Upon the request of O&R, Contractor shall execute any and all documents that O&R deems necessary to effectuate and confirm such assignment. Notwithstanding the foregoing, in the event Contractor has incorporated any Prior Work into the O&R Work Product and such Prior Work is specifically identified in writing to O&R, then such Prior Work shall remain the property of Contractor, and Contractor hereby grants to O&R, a non-exclusive, royalty-free, perpetual worldwide license to use, copy, reproduce, publish, disclose and distribute the Prior Work to the extent it is incorporated into the O&R Work Product, and to make modifications thereto. Contractor shall not

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cause or permit the disclosure to any third party of any material information concerning the O&R Work Product without the express prior written consent of O&R which consent may be withheld in the sole and unfettered discretion of O&R.

43. Relationship of Parties. Contractor shall be an independent contractor in the performance of the Work. No right of supervision, requirement of approval or other provision of the Contract and no conduct of the parties shall be construed to create a relationship of principal and agent, partners or joint venturers between the parties, or joint employers of Contractor's employees.

44. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. Con Edison's affiliates and other non-parties referenced in Articles 4, 7, 14, 17, 19, 25, 27, 29, 31, 35, 36, 37, 44 and 56 are third party beneficiaries and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

45. Waiver. Neither the acceptance of the Work or any part thereof nor any payment therefor nor any order or certificate issued under the Contract nor any performance by Con Edison of any of Contractor's duties or obligations nor any failure by Con Edison to insist on strict performance by Contractor of any of the Contract terms or to otherwise assert its rights shall be deemed to be a waiver of any provision of the Contract or of any rights or remedies to which Con Edison may be entitled because of any breach hereof. No cancellation or rescission hereof in whole or as to any part of the Work because of breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. No waiver shall be effective against Con Edison unless in writing and signed by Con Edison's authorized representative, and any such

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waiver shall be effective only with respect to the particular event to which it specifically refers.

46. Set-Off. Con Edison shall have the right to set off against any sums due Contractor under the Contract or any other contract between Con Edison and the Contractor or otherwise, any claims Con Edison may have against Contractor under the Contract or any other contract between Con Edison and Contractor or otherwise, without prejudice to the rights of the parties in respect of such claims.

47. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provision of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and

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govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that Contractor's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any such article, section or paragraph.

48. Notices. All notices required or permitted to be given under the Contract shall be in writing and given by either party by personal delivery, by reputable overnight courier or certified mail, return receipt requested, addressed to the other at the address shown in the Contract. The address of either party may be changed by written notice to the other.

49. Entire Agreement. The Contract, as it may be amended in accordance with Article 39 (Amendments) of these Standard Terms and Conditions, contains the entire agreement between Con Edison and Contractor with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Contract are merged herein.

50. Governing Law. The Contract shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of New York, applicable to agreements made and to be performed in that state. Standard Purchase Order 4078770, 0

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51. Waiver of Trial by Jury. Contractor hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Contract or any claim of damage resulting from any act or omission of the parties in any way connected with the Contract.

52. Submission to Jurisdiction/Choice of Forum.

A. Contractor hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Contractor agrees that service of process on Contractor in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Contractor at the address shown in the Contract or at the address of any office actually maintained by Contractor, or by actual personal delivery to Contractor. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

B. Contractor consents to the selection of the state and federal courts situated in the City of New York or in Rockland or Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Contractor also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.

53. Limitation on Time to Sue. No action shall be brought by Contractor based on any controversy or claim arising out of or related to the Contract, or any breach thereof, more than two years after accrual of the cause of action.

54. Performance of Work During Pendency of Disputes. If any claim or dispute shall arise under or relating to the Contract or the Work, Contractor shall continue, during the pendency of such claim or dispute, to perform the Work and comply with all other obligations under the Contract as though no such claim or dispute had arisen. Except as otherwise provided in the Contract, during the pendency of any such claim or dispute, Contractor shall be entitled to receive payments from Con Edison only with respect to non-disputed items or matters, and payments, if any, with respect to disputed items or matters shall be deferred until final resolution of the claim or dispute. Nothing in this Article 54 shall be construed to affect the provisions of Article 16.

55. Enablement in the Procurement System. In the event Contractor is not presently enabled in the Procurement System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Contractor shall promptly become enabled.

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56. Gift Policy and Unlawful Conduct. Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a

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payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and Subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract. Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor represents, warrants, and covenants that Contractor, its agents, employees, representatives and Subcontractors have not engaged and will not engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Contractor shall be in default under the Contract and all other contracts between Con Edison and Contractor and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Contractor, (b) Con Edison may, in its sole discretion, remove Contractor from Con Edison's list of qualified bidders, (c) Contractor shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Contractor (including, but not limited to, the right to payments for work performed or goods furnished), and (d) Con Edison shall have no further obligations to Contractor relating to such contracts. In addition, Contractor shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Contractor may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Contractor under the Contract or any other contract between Con Edison and Contractor during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such contracts, and in law and equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849). 332439v.2

### **Appendix A**

#### **APPENDIX A – REQUIRED CLAUSES AND CERTIFICATIONS**

(In this document, the other Party to the contract with Con Edison is referred to as the "Contractor")

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(In this document, the other party to the contract with Con Edison is referred to as the "Contractor")

As a Federal Government contractor, Con Edison must require the Contractor to agree to be bound by and comply Standard Purchase Order 4078770, 0

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with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text. Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability.

#### **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (JUL 1995)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$100,000.

#### **ANTIKICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$100,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (JUL 1995)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$100,000.

#### **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARRMENT BY THE FEDERAL GOVERNMENT**

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(this clause is applicable to contracts exceeding \$25,000)

Con Edison is required to decline to enter into contracts in excess of \$25,000 with a Contractor that has been debarred, suspended, or proposed for debarment by the Federal Government in the absence of a compelling reason to do so. When Con Edison is compelled to enter into a contract with such a Contractor, Con Edison is required to furnish certain information to the Federal Government in connection with that contract. Accordingly, the Contractor shall submit in writing to Con Edison, with any bid, offer or proposal for a contract that will exceed \$25,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Con Edison is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Con Edison to the Contractor.

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### **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization Of Small Business Concerns (MAY 2004)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$500,000 [\$1,000,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2002)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government (including the submission of Standard Forms 294 and/or 295).

### **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (APR 2002)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Con Edison is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Con Edison shall not result in any liability of Con Edison to the Contractor.

The Contractor agrees to be bound by and comply with the applicable regulations contained in: (1) Parts 60-1 and 60-2 of Title 41 of the Code of Federal Regulations, which implement Executive Order 11246; (2) Part 60-250 of Title 41 of the Code of Federal Regulations, which implements section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974; and (3) Part 60-741 of Title 41 of the Code of Federal Regulations, which implements section 503 of the Rehabilitation Act of 1973.

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### **PROHIBITION OF SEGREGATED FACILITIES**

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

### **CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING; TOXIC CHEMICAL REPORTING**

(these clauses are applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in section (b) of the clause entitled "Certification of Toxic

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Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-13 of the Federal Acquisition Regulations (section 52.223-13 of title 48 of the Code of Federal Regulations) and agrees to be bound by and to comply with the clause entitled "Toxic Chemical Release Reporting (AUG 2003)," which is contained in Section 52.223-14 of the Federal Acquisition Regulations (section 52.223-14 of title 48 of the Code of Federal Regulations).

### **NOTICE OF EMPLOYEE RIGHTS**

(this clause is applicable to contracts exceeding \$100,000 with contractors having a formally recognized union and that are located in jurisdictions where applicable state law does not forbid enforcement of union security agreements)

The Contractor agrees to post the notice required by Chapter 470 of Title 29 of the Code of Federal Regulations, which implements Executive Order 13201.

### **CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(this certification is applicable to contracts exceeding \$100,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this Contract.

### **SUBCONTRACTS FOR COMMERCIAL ITEMS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled "Subcontracts For Commercial Items Standard Purchase Order 4078770, 0

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(SEP 2006)," which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled "Utilization of Small Business Concerns (MAY 2004)" contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled "Equal Opportunity (MAY 2002)" [probably should be "(APR 2002)"] contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)" contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled "Affirmative Action for Workers with Disabilities (JUN 1998)" contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); **(v)** the clause entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)" contained in Section 52.222-39 of the Federal Acquisition Regulations (section 52.222-39 of title 48 of the Code of Federal Regulations); and **(vi)** the clause entitled "Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)." If the contract between Con Edison and the Contractor is for the supply of "commercial items" as the quoted term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations), then, to the extent that the clause entitled "Subcontracts For Commercial Items (SEP 2006)" lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled "Subcontracts For Commercial Items (SEP 2006)" and the clauses referenced in such clause, and (b) to make and comply with the provisions of the certifications that are referenced in this

Appendix A.

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### **Gift Policy**

**Gift Policy and Unlawful Conduct:** Contractor is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Contractor, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Work to be performed under the Contract.

Furthermore, Contractor is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and the Contractor or any work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Contractor's breach of any obligation of this paragraph shall be a material breach of contract entitling Con Edison to, in its sole discretion, cancel all contracts between Con Edison and Contractor, remove Contractor from its list of qualified bidders, and invoke and

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enforce all other rights or remedies that Con Edison may have under contract or applicable law. For the purposes of this paragraph, the term "Con Edison" shall include all of Con Edison's affiliates, (including, but not limited to, O&R). Contractor shall promptly report any alleged violation of this policy to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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**Signatures**

**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)