

**Contains Confidential Commercial Information**

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

ATTACHMENT NO. 1

CONTRACTOR: DANELLA CONSTRUCTION OF NY INC

PURCHASE ORDER NO.: 4185960

BID COMPARISON:

\$3,392,446

\$3,631,576

\$5,028,375

\$5,431,657

\$3,112,391

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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

COMPASS Complex Service PO  
4185960, 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 **4185960**

Revision **2**

PO Approved Date **11/07/2013**

Revision Date **11/07/2013**

Buyer **David Blaut**

Supplier: **DANELLA CONSTRUCTION OF NY INC**  
**COMPASS 80 BUSINESS PARK DR STE 200**  
**ARMONK, NY 10504**  
**UNITED STATES**

Supplier

Contact:

**MAZZARI PETER**  
**9142737880**

Key

ConEd

Contact:

**Vivian Uwechue**

**212-894-9389**

**UWECHUEV@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

**8466 Immediate DESTINATION**

**Notes:** INSTALLATION OF A TWO STAGE GAS REGULATOR STATION GR-48 - 46TH BETWEEN 5TH AND 6TH AVE

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The scope of work includes the installation of a two stage gas regulator station and approximately 1185 feet of steel gas transmission pipe and all associated connections and final restoration.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison 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 \$3,357,496. 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

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INCREASE HAS BEEN AUTHORIZED BY MEANS OF A DULY EXECUTED MODIFICATION TO THIS PURCHASE ORDER.

This Purchase order will be performed in accordance with the following which are incorporated herein by reference:

- Con Edison invitation to RFQ# 236060 and all documents referenced therein

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- Con Edison Amendments to bid event dated 6/26, 6/27, 6/28/13

- Con Edison Standard Terms and Conditions of Construction Contract's dated 7/1/12

- Con Edison Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08

- Con Edison Project Specification No. G-13-904 dated 6/13/13.

- Con Edison Trenching Manual - CONST-007 Revision Number 7 dated November 2009

- Con Edison Gas Trenching Manual dated 7-8-11 R0

- Con Edison EH&S Recurring Work Form (Short Form) dated 5.30.13

- Appendix A

- Gift Policy

- Danella Construction of NY Inc. Compliance & Exception, Offer & Disclosure Forms dated 6/28/13

Danella Construction of NY Inc. took no exceptions

Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection"). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

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 Mike Perrino 212-460-3209 perrinom@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 Mike Perrino 212-460-3209 perrinom@coned.com.

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All prices in this Purchase Order are firm and fixed priced, based on the original and revised bids related to this RFQ (#236060) submitted to Con Edison, contractor agrees not to seek pricing relief during the term of this Purchase Order.

Lump Sum Base Bid Price \$3,159,000.00

Attachment A Total Price \$117,400.00

Attachment B Total Price \$81,096.00

The items listed on Attachment A and B may be ordered by Con Edison, at its option; or performed by Contractor with Con Edison prior approval.

Attachment A and B Estimated Quantities are not guaranteed. Danella Construction of NY Inc shall only be paid for the actual quantity of each Attachment A and B Items performed outside the work scope.

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All Attachment A and B Unit Prices shall remain fixed and firm for the duration of the contract regardless of the actual quantities performed.

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### **ATTACHMENT A ITEMS**

#### **ITEMS DESCRIPTION UNIT OF MEASUREMENT ESTIMATED QUANTITIES**

680 Cut Steel Fitting or Miter Cut Pipe 12" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 694 EA 2 \$225.00

681 Cut Steel Fitting or Miter Cut Pipe 16" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 695 EA 2 \$250.00

683 Cut Steel Fitting or Miter Cut Pipe 24" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 697 EA 2 \$350.00

694 Install steel fitting, 12" (2 welds and "Tape" coating fitting/welds) EA 2 \$2,675.00

695A Install steel fitting, 16" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 2 \$5,700.00

697 Install steel fitting, 24" (2 welds and "Tape" coating fitting/welds) EA 4 \$5,800.00

697A Install steel fitting, 24" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 4 \$6,600.00

T50 \* Rock removal and disposal (Section 2.3.5) "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 20 \$350.00

T51 \* Rock removal, line drilling "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 20 \$650.00

T52 \* Boulder, Rock & masonry removal and disposal. CY 20 \$250.00

T53 \* Intact Masonry "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 10 \$300.00

T210 Pumping HR 50 \$100.00

### **ATTACHMENT B ITEMS**

#### **ITEMS DESCRIPTIONS UNIT OF MEASUREMENT ESTIMATED QUANTITIES**

610 Install Uncoated Steel Pipe, 12" (Include coating the uncoated Steel Pipe by "Tape") LF 10 \$90.00

610A Install Uncoated Steel Pipe, 12" (Include coating the uncoated Steel Pipe by "Hot Coal Tar") LF 10 \$144.00

611 Install Uncoated Steel Pipe, 16" (Include coating the uncoated Steel Pipe by "Tape") LF 10 \$95.00

611A Install Uncoated Steel Pipe, 16" (Include coating the uncoated Steel Pipe by "Hot Coal Tar") LF 10 \$200.00

613 Install Uncoated Steel Pipe, 24" (Include coating the uncoated Steel Pipe by "Tape") LF 10 \$150.00

613A Install Uncoated Steel Pipe, 24" (Include coating the uncoated Steel Pipe by "Hot Coal Tar") LF 10 \$400.00

622 Install Coated Steel Pipe, 8" LF 2 \$40.00

624 Install Coated Steel Pipe, 12" LF 2 \$40.00

625 Install Coated Steel Pipe, 16" LF 2 \$60.00

627 Install Coated Steel Pipe, 24" LF 2 \$80.00

647 Coat Pipe to Pipe Welds 12" "Coal Tar" EA 2 \$200.00

648 Coat Pipe to Pipe Welds 12" "Cold Tape" EA 2 \$153.00

649 Coat Pipe to Pipe Welds 16" "Coal Tar" EA 2 \$560.00

650 Coat Pipe to Pipe Welds 16" "Cold Tape" EA 2 \$375.00

653 Coat Pipe to Pipe Welds 24" "Coal Tar" EA 2 \$750.00

654 Coat Pipe to Pipe Welds 24" "Cold Tape" EA 2 \$500.00

666A Straight Cut Plain or Coated Pipe 12" (Includes removal of existing coating, pipe preparation for cut and beveling) EA 2 \$200.00

667A Straight Cut Plain or Coated Pipe 16" (Includes removal of existing coating, pipe preparation for cut and beveling) EA 2 \$300.00

668A Straight Cut Plain or Coated Pipe 24" (Includes removal of existing coating, pipe preparation for cut and beveling) EA 2 \$400.00

723 Weld pipe to pipe, 12" (Includes mitre Pipe weld) (See Items 647 and 648 for coating the 12" welded joint) EA 2 \$1,075.00

724 Weld pipe to pipe, 16" (Includes mitre Pipe weld) (See Items 649 and 650 for coating the 16" welded joint) EA 2 \$2,175.00

726 Weld pipe to pipe, 24" (Includes mitre Pipe weld) (See Items 653 and 654 for coating the 24" welded joint) EA 2 \$2,800.00

T1R Surface Pavement, No Base CY 5 \$500.00

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T2R Surface Pavement, with Base CY 5 \$600.00  
T7R Remove and Restore Sidewalk CY 10 \$750.00  
T7 Replace Sidewalk CY 5 \$445.00  
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T9R Remove and Restore Cobblestone Sidewalk SF 5 \$24.00  
T30 Temporary Mack CY 10 \$298.00  
T31 Binder Base CY 10 \$432.00  
T32 Concrete Base CY 10 \$240.00  
T41 Hand & Mach. Excav./Backfill/Cleanfill CY 25 \$150.00  
T44 Hand Excav./Backfill/Remove Excess CY 10 \$260.00  
T54 Break duct with live cable CY 10 \$250.00  
T56 Break duct with de-energized cable CY 10 \$250.00  
T91 Clean Fill CY 10 \$50.00  
T92 Sand Backfill CY 10 \$47.00  
T95 Truck & Dispose CY 20 \$54.00  
T101 Install Solid Sheeting SF 100 \$6.70  
T110 Vehicular Plates SF 50 \$6.00  
T112 Vehicular Plates, Strap Welded SF 50 \$8.00  
T113 Vehicular Plates, with Support Beams SF 50 \$10.50  
T120 Protection Plates SF 40 \$2.40  
T125 Test Pits (0.4 -4.0 CY) EA 5 \$300.00  
T126 Test Pits (4.1-8.0 CY) EA 2 \$790.00  
T127 Test Pits (8.1-15.0 CY) EA 2 \$1,200.00  
T128 Test Pits (15.1-25.0 CY) EA 2 \$2,400.00  
T183 Install 4"-5" split duct LF 20 \$8.70  
Reference Documents: DANELLA COMPLIANCE.EXCEPTION.OFFER. DISCLOSURE  
FORMS DATED 6.28.13.pdf  
Con Edison EH&S Recurring Work Form (Short Form) dated  
5.30.13.docx  
AMENDMENT 2.docx  
Con Edison's Signed Project Specification No. G-13-904 dated  
6.13.13.pdf  
AMENDMENT 1.docx  
AMENDMENT 3.docx  
Supplemental\_Construction\_Contract\_Requirements\_(SCCR)  
6-10-08 R1.pdf  
Trenching Manual - Final Nov. 2009 R7.pdf  
Gas Trenching Manual dated 7-8-11 R0.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:  
09/10/2013  
1 EACH 3357496.0  
0  
3,357,496.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 157,950.00

Retainage Rate: 10%

Negotiation Line Note To Supplier

In the space provided please provide the TOTAL LUMP SUM BID PRICE (BASE BID TOTAL + ATTACHMENT "A" EVALUATED UNIT PRICE TOTAL + ATTACHMENT "B" EVALUATED UNIT PRICE TOTAL) and attach the detailed price sheet in your response.

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1-1 LUMPSUM - LUMPSUM -  
LUMPSUM AGREEMENT

Needed:

09/10/2013

1 EACH 3357496.0

0

3,357,496.00

Ship To:

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

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Line /

Pay

Item

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

(USD)

Amount

(USD)

Total: **3,357,496.00 (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

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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 4185960, 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.

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



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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, 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

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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 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 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

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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 4185960, 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 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

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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.Contractors warrants the Work for a period of three (3) years from the date of completion and Standard Purchase Order 4185960, 2

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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

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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 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

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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 4185960, 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 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

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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 4185960, 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 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



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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

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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 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

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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 4185960, 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 4185960, 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 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

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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 4185960, 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 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

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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,

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 4185960, 2

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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.

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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 4185960, 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 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.Contractors 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 4185960, 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 4185960, 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 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

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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 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 4185960, 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 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



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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.

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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 Standard Purchase Order 4185960, 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 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)

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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 4185960, 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 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,

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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 4185960, 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 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

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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 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 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

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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).  
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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")

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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 4185960, 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 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

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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.

Standard Purchase Order 4185960, 2

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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 4185960, 2

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## Contains Confidential Commercial Information

(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).

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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. 2

CONTRACTOR: DANELLA CONSTRUCTION OF NY INC

PURCHASE ORDER NO.: 4217851

BID COMPARISON:

\$2,688,299

\$3,328,979

\$3,940,485

\$2,862,177

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COMPASS Complex Service PO  
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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 **4217851**

Revision **0**

PO Approved Date **09/18/2013**

Revision Date

Buyer **David Blaut**

Supplier: **DANELLA CONSTRUCTION OF NY INC**

**COMPASS 80 BUSINESS PARK DR STE 200**

**ARMONK, NY 10504**

**UNITED STATES**

Supplier

Contact:

**MAZZARI PETER**

**9142737880**

Key

ConEd

Contact:

**Omar Nokaly**

**646-498-1944**

**NOKALYO@CONED.COM**

Ship To: **750 EAST 16TH ST**

**NEW YORK, NY 10009**

**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

**8466 Immediate**

**Notes:** W 75TH STREET & WEST END AVENUE GAS REGULATOR 42 & 43

The scope of work includes excavation, trenching, installation of 8", 12", 16" and 20" steel gas pipe, restoration, and all work associated with the installation of a two-stage gas regulator station. Furnish supervision, labor, equipment and material to install approximately 320 feet of steel gas pipe and a two-stage regulator station in Manhattan.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison 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 \$2,688,277. 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.

This Purchase order will be performed in accordance with the following which are incorporated herein by reference:

Con Edison invitation to RFQ# 368063 and all documents referenced therein

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Con Edison Amendments to bid event dated 8/28/13

Con Edison Major Projects Contractor Pre-Bid Meeting Minutes

Con Edison Standard Terms and Conditions of Construction Contract's dated 7/1/12

Con Edison Supplemental Construction Contract Requirements CONST-004 Revision Number 1, dated 6/7/11

Con Edison Project Specification No. G-13-909 dated 8/19/13

Con Edison Addendum 1 Job Specification G-13-909 Dated 8/28/13

Con Edison Trenching Manual - CONST-007 Revision Number 7 dated November 2009

Con Edison Gas Trenching Manual dated 7-8-11 R0

Con Edison Major Projects Contractor Pre-Award Meeting Minutes

Appendix A

Gift Policy

Danella Construction Disclosure Form dated 8/30/13

Danella Construction took no exceptions

Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection" ). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

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 Mike Perrino 212-460-3209 perrinom@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 Mike Perrino 212-460-3209 perrinom@coned.com

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All prices in this Purchase Order are firm and fixed priced, based on the original and revised bids related to this RFQ (#368063) submitted to Con Edison, contractor agrees not to seek pricing relief during the term of this Purchase Order.

Lump Sum Base Bid Price \$2,429,646.00

Attachment A Total Price \$185,077.00

Attachment B Total Price \$73,554.00

The items listed on Attachment A and B may be ordered by Con Edison, at its option; or performed by Contractor with Con Edison prior approval.

Attachment A and B Estimated Quantities are not guaranteed. Safeway Construction Enterprises Inc. shall only be paid for the actual quantity of each Attachment A and B Items performed outside the work scope. All Attachment A and B Unit Prices shall remain fixed and firm for the duration of the contract regardless of the actual quantities performed.

COMPASS Complex Service PO

4217851, 0

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ATTACHMENT A ITEMS

ITEMS DESCRIPTIONS UNIT OF MEASUREMENT ESTIMATED QUANTITIES PRICE

678 Cut Steel Fitting or Miter Cut Pipe 8" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 692 EA 1 \$200.00

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680 Cut Steel Fitting or Miter Cut Pipe 12" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 694 EA 1 \$225.00  
681 Cut Steel Fitting or Miter Cut Pipe 16" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 695 EA 2 \$250.00  
682 Cut Steel Fitting or Miter Cut Pipe 20" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 696 EA 2 \$350.00  
692 Install steel fitting, 8" (2 welds and "Tape" coating fitting/welds) EA 4 \$1,840.00  
692A Install steel fitting, 8" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 4 \$1,860.00  
694 Install steel fitting, 12" (2 welds and "Tape" coating fitting/welds) EA 4 \$2,388.00  
694A Install steel fitting, 12" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 4 \$2,890.00  
695 Install steel fitting, 16" (2 welds and "Tape" coating fitting/welds) EA 4 \$3,820.00  
695A Install steel fitting, 16" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 4 \$4,235.00  
696 Install steel fitting, 20" (2 welds and "Tape" coating fitting/welds) EA 4 \$3,465.00  
696A Install steel fitting, 20" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 4 \$3,915.00  
T50 \* Rock removal and disposal (Section 2.3.5) "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 50 \$350.00  
T51 \* Rock removal, line drilling "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 50 \$956.00  
T52 \* Boulder, Rock & masonry removal and disposal. CY 50 \$250.00  
T53 \* Intact Masonry "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 10 \$300.00  
T210 Pumping HR 50 \$100.00

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**ATTACHMENT B ITEMS**

ITEMS DESCRIPTIONS UNIT OF MEASUREMENT ESTIMATED QUANTITIES PRICE  
608 Install Uncoated Steel Pipe, 8" (Include coating the uncoated Steel Pipe by "Tape") LF 2 \$71.00  
608A Install Uncoated Steel Pipe, 8" (Include coating the uncoated Steel Pipe by "Hot Coal Tar") LF 2 \$116.00  
610 Install Uncoated Steel Pipe, 12" (Include coating the uncoated Steel Pipe by "Tape") LF 5 \$90.00  
610A Install Uncoated Steel Pipe, 12" (Include coating the uncoated Steel Pipe by "Hot Coal Tar") LF 5 \$144.00  
611 Install Uncoated Steel Pipe, 16" (Include coating the uncoated Steel Pipe by "Tape") LF 5 \$95.00  
611A Install Uncoated Steel Pipe, 16" (Include coating the uncoated Steel Pipe by "Hot Coal Tar") LF 5 \$200.00  
612 Install Uncoated Steel Pipe, 20" (Include coating the uncoated Steel Pipe by "Tape") LF 5 \$125.00  
612A Install Uncoated Steel Pipe, 20" (Include coating the uncoated Steel Pipe by "Hot Coal Tar") LF 5 \$300.00  
622 Install Coated Steel Pipe, 8" LF 2 \$40.00  
624 Install Coated Steel Pipe, 12" LF 2 \$50.00  
625 Install Coated Steel Pipe, 16" LF 2 \$60.00  
626 Install Coated Steel Pipe, 20" LF 2 \$80.00  
643 Coat Pipe to Pipe Welds 8" "Coal Tar" EA 2 \$260.00  
644 Coat Pipe to Pipe Welds 8" "Cold Tape" EA 2 \$108.00  
647 Coat Pipe to Pipe Welds 12" "Coal Tar" EA 2 \$260.00  
648 Coat Pipe to Pipe Welds 12" "Cold Tape" EA 2 \$148.00  
649 Coat Pipe to Pipe Welds 16" "Coal Tar" EA 2 \$560.00  
650 Coat Pipe to Pipe Welds 16" "Cold Tape" EA 2 \$375.00  
651 Coat Pipe to Pipe Welds 20" "Coal Tar" EA 2 \$660.00  
652 Coat Pipe to Pipe Welds 20" "Cold Tape" EA 2 \$400.00  
664 Straight Cut Plain or Coated Pipe 8" (Includes removal of existing coating, pipe preparation for cut and beveling) EA 2 \$100.00  
666 Straight Cut Plain or Coated Pipe 12" EA 2 \$200.00  
666A Straight Cut Plain or Coated Pipe 12" (Includes removal of existing coating, pipe preparation for COMPASS Complex Service PO  
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cut and beveling) EA 2 \$200.00  
667A Straight Cut Plain or Coated Pipe 16" (Includes removal of existing coating, pipe preparation for cut and beveling) EA 2 \$250.00

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668A Straight Cut Plain or Coated Pipe 20" (Includes removal of existing coating, pipe preparation for cut and beveling) EA 2 \$350.00  
721 Weld pipe to pipe, 8" (Includes miter Pipe weld) (See Items 643 and 644 for coating the 12" welded joint) EA 2 \$730.00  
723 Weld pipe to pipe, 12" (Includes miter Pipe weld) (See Items 647 and 648 for coating the 12" welded joint) EA 2 \$1,095.00  
724 Weld pipe to pipe, 16" (Includes miter Pipe weld) (See Items 649 and 650 for coating the 16" welded joint) EA 2 \$1,495.00  
725 Weld pipe to pipe, 20" (Includes miter Pipe weld) (See Items 651 and 652 for coating the 16" welded joint) EA 2 \$1,285.00  
T1R Surface Pavement, No Base CY 5 \$500.00  
T2R Surface Pavement, with Base CY 5 \$600.00  
T7R Remove and Restore Sidewalk CY 10 \$680.00  
T7 Replace Sidewalk CY 5 \$445.00  
T9R Replace sidewalk, flagstone, brick CY 10 \$24.00  
T30 Temporary Mack CY 10 \$298.00  
T31 Binder Base CY 10 \$432.00  
T32 Concrete Base CY 10 \$240.00  
T41 Hand & Mach. Excav./Backfill/Cleanfill CY 25 \$150.00  
T43 Machine & Hand Excav./Backfill/Remove Excess CY 10 \$120.00  
T44 Hand Excav./Backfill/Remove Excess CY 10 \$220.00  
T54 Break duct with live cable CY 10 \$250.00  
T56 Break duct with de-energized cable CY 10 \$250.00  
T91 Clean Fill CY 10 \$50.00  
T92 Sand Backfill CY 10 \$47.00  
T95 Truck & Dispose CY 20 \$54.00  
T101 Install Solid Sheeting SF 100 \$6.70  
T110 Vehicular Plates SF 50 \$6.00  
T112 Vehicular Plates, Strap Welded SF 50 \$8.00  
T113 Vehicular Plates, with Support Beams SF 50 \$10.50  
T120 Protection Plates SF 40 \$2.40  
T125 Test Pits (0.4 -4.0 CY) EA 5 \$300.00  
T126 Test Pits (4.1-8.0 CY) EA 2 \$790.00  
T127 Test Pits (8.1-15.0 CY) EA 2 \$1,200.00  
T128 Test Pits (15.1-25.0 CY) EA 2 \$2,345.00  
T183 Install 4"-5" split duct LF 20 \$8.60

Reference Documents: Trenching Manual - Final Nov. 2009 R7.pdf  
Supplemental Construction Contract Requirements-Const-004 Rev1  
6-7-2011.pdf

Gas Trenching Manual dated 7-8-11 R0.pdf

CON EDISON MAJOR PROJECTS CONTRACTOR

PRE-AWARD MEETING MINUTES.doc

Danella Construction Disclosure Form dated 8.30.13.pdf

CON EDISON PROJECT SPECIFICATION NO. GR-13-909

DATED 8.19.13.docx

CON EDISON ADDENDUM 1 JOB SPECIFICATION G-13-909

DATED 8.28.13.docx

CON EDISON MAJOR PROJECTS CONTRACTOR PRE-BID

MEETING MINUTES.docx

AMENDMENT 1.docx

All prices and amounts on this order are expressed in USD

COMPASS Complex Service PO

4217851, 0

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Line /

Pay

Item

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

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Amount  
(USD)

1 Needed:

11/16/2013

1 EACH 2688277.0

0

2,688,277.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 134,413.85

Retainage Rate: 10%

Negotiation Line Note To Supplier

In the space provided please provide the TOTAL LUMP SUM BID PRICE (BASE BID TOTAL + ATTACHMENT "A" EVALUATED UNIT PRICE TOTAL + ATTACHMENT "B" EVALUATED UNIT PRICE TOTAL) and attach the detailed price sheet in your response.

1-1 LUMPSUM - LUMPSUM -

LUMPSUM AGREEMENT

Needed:

11/16/2013

1 EACH 2688277.0

0

2,688,277.00

Ship To:

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

Total: **2,688,277.00 (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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### **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



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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 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.

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

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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 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

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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 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

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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

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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 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

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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 4217851, 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:

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(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

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,

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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 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 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 4217851, 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

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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 4217851, 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



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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 4217851, 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

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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

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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 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

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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 4217851, 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 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 4217851, 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

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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 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 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.

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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,  
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 4217851, 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

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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 4217851, 0

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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.Contractors 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

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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 4217851, 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 4217851, 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



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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 4217851, 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,

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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

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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 Standard Purchase Order 4217851, 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.

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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 4217851, 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

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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 4217851, 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. 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

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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 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

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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 4217851, 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 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

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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 4217851, 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.

#### **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 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).



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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.

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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**

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(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 4217851, 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 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. 3

CONTRACTOR: NETWORK INFRASTRUCTURE INC

PURCHASE ORDER NO.: 4205685

BID COMPARISON:

\$2,182,500

\$3,636,934

\$2,316,740

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COMPASS Complex Service PO  
4205685, 3  
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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 **4205685**

Revision **3**

PO Approved Date **08/22/2013**

Revision Date **08/22/2013**

Buyer **David Blaut**

Supplier: **NETWORK INFRASTRUCTURE INC**

**COMPASS 94 TAFT AVE**

**HEMPSTEAD, NY 11550**

**UNITED STATES**

Supplier

Contact:

**WALSH KENNETH**

**5163853030#102**

Key

ConEd

Contact:

**Richard Harnish**

**347-672-3018**

**HARNISHR@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

**8288 Immediate N/A**

**Notes:** MT VERNON 36" GAS MAIN INSTALLATION

Furnish supervision, labor, equipment and material to install approximately 1500 feet of steel gas pipe transmission lines in Mt Vernon, NY. The scope of work includes excavation, trenching, installation of 36" steel gas pipe, restoration, and all work associated with the of steel gas transmission main.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison 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 \$2,123,055. 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.

This Purchase order will be performed in accordance with the following which are incorporated herein by reference:

Con Edison invitation to RFQ# 298058 and all documents referenced therein

Con Edison Amendments to bid event dated 7/25/13, 7/31/13, 8/1/13

COMPASS Complex Service PO

4205685, 3

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Con Edison Standard Terms and Conditions of Construction Contract's dated 7/1/12

## Contains Confidential Commercial Information

Con Edison Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08

Con Edison Project Specification G-13-917 dated 7.19.13

Con Edison Mt. Vernon TG Special Conditions and Clarifications dated 7.19.13

Con Edison Trenching Manual - CONST-007 Revision Number 7 dated November 2009

Con Edison Gas Trenching Manual dated 7-8-11 R0

Appendix A

Gift Policy

Network Infrastructure Inc. Disclosure Form dated 7/31/13

Network Infrastructure Inc. took no exceptions

Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection"). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

---

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 Mike Perrino 212-460-3209 perrinom@coned.com.

All prices in this Purchase Order are firm and fixed priced, based on the original and revised bids related to this RFQ (#298058) submitted to Con Edison, contractor agrees not to seek pricing relief during the term of this Purchase Order.

Lump Sum Base Bid Price \$1,740,000.00

Attachment A Total Price \$383,055.00

The items listed on Attachment A may be ordered by Con Edison, at its option; or performed by Contractor with Con Edison prior approval.

Attachment A Estimated Quantities are not guaranteed. Network Infrastructure Inc. shall only be paid for the actual quantity of each Attachment A Items performed outside the work scope. All Attachment A Unit Prices shall remain fixed and firm for the duration of the contract regardless of the actual quantities performed.

### ATTACHMENT A ITEMS

ITEMS DESCRIPTIONS UNIT OF MEASUREMENT ESTIMATED QUANTITIES PRICE

T2R Street surface pavement with any base concrete including base that contains block, brick or asphalt material greater than 8". The "R" suffix includes restoration with saw cutting. CY 50 \$490.00

T8R Remove, Dispose and replace concrete driveways/sidewalks with all types of reinforcement CY 40 \$700.00

T30 Furnish, place and maintain temporary pavement. CY 40 \$305.00

T41 Earth excavation by machine and hand, load and haul away, and disposal. Furnish and install sand, COMPASS Complex Service PO 4205685, 3

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clean backfill or NYS spec Item #4. CY 40 \$175.00

T42 Earth excavation by 100% hand only, load and haul away, and dispose of debris. Furnish and install sand, clean backfill, or NYS spec Item #4. CY 30 \$300.00

T50\* Rock removal and disposal (Section 2.3.4) "Incremental" in cost to trench excavation, normal earth excavation including sheeting, if trench depth is 5' or greater and / or soil conditions require. CY 30 \$600.00

T51 \* Rock CY 30 \$1,000.00

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T52 \* Boulder, Rock & masonry removal and disposal. CY 20 \$400.00  
T53 \* Break, remove, and dispose of intact masonry. Including the removal of abandoned ducts, abandoned structures, layers of pavement surface, and/or base only when separated from initial roadway (double roadway) and plain or reinforced concrete. CY 20 \$400.00  
T54\* Break out, remove and dispose of duct enclosures, conduit encasements, wooden duct and duct which contain live cables. Maintain and support cables. CY 20 \$350.00  
T70 Cut, Remove and dispose of 1 inch through 8 inch Metallic Pipe. LF 100 \$16.00  
T126 Test Pits (4.1 to 8.0 cy) Excavate by hand to expose all subsurface facilities or as directed by the C.A.R. EACH 8 \$1,050.00  
T183 Install 4" – 5" split conduit. LF 500 \$10.00  
T210\* Furnish labor and equipment for continuous excavation or structure dewatering due to underground streams, tides and water main leaks. Includes up to two four inch pumps. CH 100 \$200.00  
628B Install Coated Steel Pipe, 36"x 0.5" Wall LF 200 \$100.00  
656B Coat Pipe & Pipe Welds 36" with Cold Applied Tape EACH 15 \$1,345.00  
670A Cut/Bevel Steel Pipe, 36" x 0.5" Wall (Includes pipe preparation) EACH 12 \$815.00  
684A Cut/Bevel Steel Fitting, 36" x 0.5" Wall/Mitre Weld. EACH 12 \$1,200.00  
698A Install Steel Fittings (2 welds & backwelds-if required) 36" x 0.5" wall and Coat. EACH 12 \$7,500.00  
727A Pipe to Pipe Weld, 36" x 0.5" Wall (including backwelding, if required). EACH 12 \$3,500.00

It has been noted T125 has been eliminated from the bid and will not appear on the purchase order.

Reference Documents: Network Infrastructure Inc. Disclosure Form dated 7.31.13.pdf

AMENDMENT 3.docx

NEW ATTACHMENT A.docx

e & w 4th st 1-501729.pdf

TP 1 to 4.pdf

Con Edison Mt. Vernon TG Special Conditions and Clarifications

dated 7.19.13.docx

e & w 4th st 1-501728.pdf

AMENDMENT 2.docx

e & w 4th st 1-501731.pdf

AMENDMENT 1.docx

Con Edison Project Specification G-13-917 dated 7.19.13.doc

e & w 4th st 1-501730.pdf

e & w 4th st 1-501727.pdf

Gas Operations Guideline for Use of Holiday Detector (Jeeper) .pdf

TP 5 to 17.pdf

Trenching Manual - Final Nov. 2009 R7.pdf

Gas Trenching Manual dated 7-8-11 R0.pdf

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

6-10-08 R1.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:

10/15/2013

1 EACH 2123055.0

0

2,123,055.00

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4205685, 3

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Line /

Pay

Item

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

(USD)

**Contains Confidential Commercial Information**

Amount  
(USD)

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT

Max Retainage Amount: 106,152.75

Retainage Rate: 10%

Negotiation Line Note To Supplier

In the space provided please provide the TOTAL LUMP SUM BID PRICE (BASE BID TOTAL + ATTACHMENT "A" EVALUATED UNIT PRICE TOTAL) and attach the detailed price sheet in your response.

1-1 LUMPSUM - LUMPSUM -  
LUMPSUM AGREEMENT

Needed:

10/15/2013

1 EACH 2123055.0

0

2,123,055.00

Ship To:

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

2 Needed:

08/29/2013

0 EACH 19140.00 0.00

LUMPMOD

**This line CANCELED on 22-AUG-2013**

**Original quantity ordered: 1**

**Quantity CANCELED: 1**

2-1 LUMPMOD Needed:

08/29/2013

1 EACH 19140.00 0.00

Ship To:

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

**This Pay Item CANCELED on 22-AUG-2013**

**Original Pay Item Quantity: 1**

**Quantity CANCELED: 1**

Total: **2,123,055.00 (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 4205685, 3

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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 4205685, 3

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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 Standard Purchase Order 4205685, 3

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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 Standard Purchase Order 4205685, 3

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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 4205685, 3

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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.Contractors 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 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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. 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 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 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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 Standard Purchase Order 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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 4205685, 3

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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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### **Signatures**

**Buyer Supplier** (Authorized Representative Signature) (Authorized Representative Signature) Name Name (Title) (Title)  
(Date) (Date) Page 50 of 51

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ATTACHMENT NO. 4

CONTRACTOR: SAFEWAY CONSTRUCTION  
ENTERPRISES INC

PURCHASE ORDER NO.: 4202298

BID COMPARISON:

\$3,927,154  
\$4,292,201  
\$4,301,454  
\$4,620,559  
\$3,331,994

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COMPASS Complex Service PO  
4202298, 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 **4202298**  
Revision **1**  
PO Approved Date **11/12/2013**  
Revision Date **11/12/2013**  
Buyer **David Blaut**  
Supplier: **SAFWAY CONSTRUCTION ENTERPRISES INC**  
**COMPASS 54-60 44TH ST**  
**MASPETH, NY 11378**  
**UNITED STATES**  
Supplier  
Contact:  
**DIRE GUIDO**  
**7183496645**  
Key  
ConEd  
Contact:  
**Vivian Uwechue**  
**212-894-9389**  
**UWECHUEV@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  
**8880 Immediate N/A**  
**Notes:** E 80th Street from York to 3rd Avenue Two Stage Gas Regulator-51

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The scope of work includes excavation, trenching, installation of approximately 1500 feet of 12" and 16" steel gas pipe, restoration, and all work associated with the installation of a two-stage gas regulator station.

No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison 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 \$3,759,264. 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.

This Purchase order will be performed in accordance with the following which are incorporated herein by reference:

Con Edison invitation to RFQ# 288059 and all documents referenced therein

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Con Edison Amendments to bid event dated 7/22/13, 7/25/13

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Con Edison Standard Terms and Conditions of Construction Contract's dated 7/1/12  
Con Edison Supplemental Construction Contract Requirements C-CM-003 Revision Number 1, dated 6/10/08  
Con Edison Project Specification No. G-13-908 dated 7/10/13.  
Addendum#1 yo Project Specification No. G-13-908 Rev 1, dated July 19, 2013  
Con Edison Trenching Manual - CONST-007 Revision Number 7 dated November 2009  
Con Edison Gas Trenching Manual dated 7-8-11 R0

Appendix A  
Gift Policy

Safeway Construction Enterprises Inc. Disclosure Form dated 7/26/13

Safeway Construction Enterprises Inc. took no exceptions

Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection" ). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

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 Mike Perrino 212-460-3209 perrinom@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 Mike Perrino 212-460-3209 perrinom@coned.com.

All prices in this Purchase Order are firm and fixed priced, based on the original and revised bids related to this RFQ (#288059) submitted to Con Edison, contractor agrees not to seek pricing relief during the term of this Purchase Order.

Lump Sum Base Bid Price \$3,450,000.00

Attachment A Total Price \$240,190.00

Attachment B Total Price \$69,074.00

The items listed on Attachment A and B may be ordered by Con Edison, at its option; or performed by Contractor with Con Edison prior approval.

Attachment A and B Estimated Quantities are not guaranteed. Safeway Construction Enterprises Inc. shall only be paid for the actual quantity of each Attachment A and B Items performed outside the work scope. All Attachment A and B Unit Prices shall remain fixed and firm for the duration of the contract regardless of the actual quantities performed.

**ATTACHMENT A ITEMS**

**ITEMS DESCRIPTIONS UNIT OF MEASUREMENT ESTIMATED QUANTITIES PRICE**

COMPASS Complex Service PO

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680 Cut Steel Fitting or Miter Cut Pipe 12" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 694 EA 2 \$370.00

681 Cut Steel Fitting or Miter Cut Pipe 16" (Includes Beveling) PLEASE NOTE: The installation, alignment, 2 welds and coating shall be paid under Item 695 EA 8 \$250.00

694 Install steel fitting, 12" (2 welds and "Tape" coating fitting/welds) EA 2 \$1,700.00

694A Install steel fitting, 12" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 2 \$1,975.00

695 Install steel fitting, 16" (2 welds and "Tape" coating fitting/welds) EA 4 \$3,100.00

695A Install steel fitting, 16" (2 welds and "Hot Coal Tar" Coating fitting/welds) EA 4 \$4,125.00

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T50 \* Rock removal and disposal (Section 2.3.5) "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 20 \$500.00  
T51 \* Rock removal, line drilling "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 20 \$885.00  
T52 \* Boulder, Rock & masonry removal and disposal. CY 20 \$150.00  
T53 \* Intact Masonry "Incremental" in cost to trench excavation, including FI sheeting and backfill, if trench depth is 5' or greater. CY 10 \$250.00  
T210 Pumping HR 50 \$100.00  
SLT16 16" "Straddle Connection" to 30" main (cut-out/tie-in) w/30" valve w/2 FT arms at York Ave. and E. 80th St. LSP 1 \$163,000.00

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### ATTACHMENT B ITEMS

ITEMS	DESCRIPTIONS	UNIT OF MEASUREMENT	ESTIMATED QUANTITIES	PRICE
610	Install Uncoated Steel Pipe, 12" (Include coating the uncoated Steel Pipe by "Tape")	LF	10	\$125.00
610A	Install Uncoated Steel Pipe, 12" (Include coating the uncoated Steel Pipe by "Hot Coal Tar")	LF	10	\$150.00
611	Install Uncoated Steel Pipe, 16" (Include coating the uncoated Steel Pipe by "Tape")	LF	10	\$175.00
611A	Install Uncoated Steel Pipe, 16" (Include coating the uncoated Steel Pipe by "Hot Coal Tar")	LF	10	\$190.00
622	Install Coated Steel Pipe, 8"	LF	2	\$75.00
624	Install Coated Steel Pipe, 12"	LF	10	\$115.00
625	Install Coated Steel Pipe, 16"	LF	25	\$140.00
647	Coat Pipe to Pipe Welds 12" "Hot Coal Tar Enamel"	EA	2	\$225.00
648	Coat Pipe to Pipe Welds 12" "Cold Tape"	EA	2	\$194.00
649	Coat Pipe to Pipe Welds 16" "Hot Coal Tar Enamel"	EA	4	\$360.00
650	Coat Pipe to Pipe Welds 16" "Cold Tape"	EA	8	\$260.00
666A	Straight Cut Plain or Coated Pipe 12" (Includes removal of existing coating, pipe preparation for cut and beveling)	EA	2	\$150.00
667A	Straight Cut Plain or Coated Pipe 16" (Includes removal of existing coating, pipe preparation for cut and beveling)	EA	2	\$350.00
723	Weld pipe to pipe, 12" (Includes mitre Pipe weld) (See Items 647 and 648 for coating the 12" welded joint)	EA	2	\$800.00
724	Weld pipe to pipe, 16" (Includes mitre Pipe weld) (See Items 649 and 650 for coating the 16" welded joint)	EA	6	\$1,500.00
T1R	Surface Pavement, No Base	CY	5	\$250.00
T2R	Surface Pavement, with Base	CY	5	\$450.00
T7R	Remove and Restore Sidewalk	CY	10	\$600.00
T7	Replace Sidewalk	CY	5	\$407.00
T9R	Remove and Restore Cobblestone Sidewalk	SF	5	\$21.00
T30	Temporary Mack	CY	10	\$210.00
T31	Binder Base	CY	10	\$270.00
T32	Concrete Base	CY	10	\$210.00
T41	Hand & Mach. Excav./Backfill/Cleanfill	CY	25	\$175.00
T44	Hand Excav./Backfill/Remove Excess	CY	10	\$180.00
T54	Break duct with live cable	CY	10	\$225.00
T56	Break duct with de-energized cable	CY	10	\$75.00
T91	Clean Fill	CY	10	\$45.00
T92	Sand Backfill	CY	10	\$45.00
T95	Truck & Dispose	CY	20	\$52.00
COMPASS	Complex Service PO			
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T101	Install Solid Sheeting	SF	100	\$5.00
T110	Vehicular Plates	SF	50	\$5.00
T112	Vehicular Plates, Strap Welded	SF	50	\$7.00
T113	Vehicular Plates, with Support Beams	SF	50	\$10.00
T120	Protection Plates	SF	40	\$2.00
T125	Test Pits (0.4 -4.0 CY)	EA	5	\$415.00
T126	Test Pits (4.1-8.0 CY)	EA	2	\$785.00

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T127 Test Pits (8.1-15.0 CY) EA 2 \$1,190.00  
T128 Test Pits (15.1-25.0 CY) EA 2 \$2,178.00  
T183 Install 4"-5" split duct LF 20 \$10.00

Reference Documents: AMENDMENT 1.docx  
Addendum#1 To Project Specification No. G-13-908 Rev 1, dated July 19, 2013.docx  
Trenching Manual - Final Nov. 2009 R7.pdf  
Supplemental\_Construction\_Contract\_Requirements\_(SCCR) 6-10-08 R1.pdf  
Gas Trenching Manual dated 7-8-11 R0.pdf  
Con Edison PROJECT SPECIFICATION NO. G-13-908 dated 7.10.13.doc  
AMENDMENT 2.docx  
Safeway Construction Enterprises Inc. Disclosure Form dated 7.26.13.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:  
10/11/2013  
1 EACH 3759264.0  
0  
3,759,264.00

LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT  
Max Retainage Amount: 172,500.00  
Retainage Rate: 10%  
Negotiation Line Note To Supplier

In the space provided please provide the TOTAL LUMP SUM BID PRICE (BASE BID TOTAL + ATTACHMENT "A" EVALUATED UNIT PRICE TOTAL + ATTACHMENT "B" EVALUATED UNIT PRICE TOTAL) and attach the detailed price sheet in your response.

1-1 LUMPSUM - LUMPSUM -  
LUMPSUM AGREEMENT  
Needed:  
10/11/2013  
1 EACH 3759264.0  
0  
3,759,264.00

Ship To:  
Use the ship-to address at the top of page 1  
Total: **3,759,264.00 (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**

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**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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### **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

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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 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 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

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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 Standard Purchase Order 4202298, 1

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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

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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 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 4202298, 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.

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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 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)

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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 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 4202298, 1

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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

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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

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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 4202298, 1

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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 4202298, 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



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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, 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 4202298, 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

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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, 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

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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 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

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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, Standard Purchase Order 4202298, 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

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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 4202298, 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.

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 4202298, 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

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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 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

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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 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 4202298, 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

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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 Standard Purchase Order 4202298, 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



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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 4202298, 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 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 4202298, 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

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(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.

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

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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 Standard Purchase Order 4202298, 1

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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 Standard Purchase Order 4202298, 1

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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

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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 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 4202298, 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.

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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, 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, 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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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

assignments.

## **Contains Confidential Commercial Information**

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

Standard Purchase Order 4202298, 1  
Proprietary and Confidential Page 42 of 50

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

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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. Standard Purchase Order 4202298, 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 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 4202298, 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.

#### **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.

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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**

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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 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 4202298, 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

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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. 5

CONTRACTOR: DURR MECHANICAL CONSTRUCTION  
INC

PURCHASE ORDER NO.: 4186790

BID COMPARISON:

\$16,420,000  
\$14,775,000  
\$18,047,146  
\$22,597,897  
\$22,700,000  
\$14,381,300  
\$13,211,800

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COMPASS Complex Service PO  
4186790, 6

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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 **4186790**

Revision **6**

PO Approved Date **10/25/2013**

Revision Date **10/25/2013**

Buyer **Jill Kerschensteiner**

Supplier: **DURR MECHANICAL CONSTRUCTION INC**

**80 8TH AVE  
NEW YORK, NY 10011  
UNITED STATES**

Supplier

Contact:

**HEIDINGER FRANK  
(212) 627-1313**

Key

ConEd

Contact:

**John Feliciano  
646-235-2630**

**FELICIANOJOHN@CONED.COM**

Ship To: **Multiple**

Bill To: **PO Box 799**

**Cooper Station**

**New York, NY 10276-0799**

**UNITED STATES**

Supplier No. Payment Terms Freight Terms FOB Transportation Ship Via

**8586 Immediate DESTINATION**

**Notes:** Gas Mechanical Package 3A - East 74th Street Generating Station.

The Scope Of Work Shall Include But Not Be Limited To The Following: Installation Of New Dual Fuel Burners, Piping, Conduit, Cable And All Associated Controls, Equipment And Connections.

Con Edison Representatives

John Feliciano felicianoj@coned.com 646/246-2630

Mike Toskos toskosk@coned.com 212/894-9378

Durr Mechanical Representative

Frank Heidinger fheidinger@durrmech.com 212/243-4917

No Vendor/Contractor can perform any work before a site HASP is approved by Con Edison EH&S.

INVOICES & SUPPORTING DOCUMENTS WILL GO TO YOUR CON ED REPRESENTATIVE

Expenditure Limitation: The Maximum Expenditure Authorized Under Purchase Order Is \$14,775,000

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 Revision To This Purchase Order.

Purchase Order will be performed in accordance with the following which are incorporated herein by reference:

Con Edison invitation to RFQ# 97046 and all documents referenced therein and any other drawings, specifications and clarifications provided.

COMPASS Complex Service PO

4186790, 6

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Con Edison Standard Terms and Conditions of Construction Contracts dated July 1, 2012

Con Edison Supplemental Construction Contract Requirements C-CM-003 Rev. 1, June 10, 2008

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Con Edison Appendix A  
Con Edison Gift Policy  
Con Edison HP MM Rev CM 31313 PKG 3A.Pdf March 13, 2013  
Con Edison Specification Package Boiler Front Wall Addendum Rev 00 Dated January 2013  
Con Edison Specification PM MM rev CM 31313 Package 3A March 13, 2013  
Con Edison 74th Street Gas Mechanical Special Conditions PN 22945 08 3A March 21, 2013  
Durr Mechanical Offer Compliance Exception Dated July 22 2013  
Durr Mechanical Disclosure Form Dated July 22 2013  
Durr Mechanical Took No Exceptions  
PN 22945-08 PACKAGE 3A Bid Clarifications # 01 Dated March 15, 2103  
PN 22945-08 PACKAGE 3A Bid Clarifications # 02 Dated March 15, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 03 Dated March 22, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 04 Dated March 22, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 05 Dated March 26, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 06 Dated March 25, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 07 Dated March 26, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 08 Dated March 26, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 09 Dated March 26, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 10 Dated March 28, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 11 Dated March 28, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 12 Dated March 28, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 13 Dated March 28, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 14 Dated March 28, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 15 Dated March 29, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 16 Dated April 01, 2013  
PN 22945-08 PACKAGE 3A Bid Clarifications # 17 Dated April 03, 2013

=====

The Additional Services Set Forth Below May Be Ordered By Con Edison, at its Option, at the Prices Set Forth Below.

Electrical Work (PB Conduit Run & Roof Lighting), as Set Forth In Clarification #12 dated March 28, 2013, Option Price \$152,150.00

Premium Time Allowance On A T&M Basis, Not To Exceed \$139,000 (Not Included in base bid)

Premium Time Hours Required To Expedite Base Scope Work Based on the Breakout Below,

- a) 1000 hours Boilermaker - 100 foreman /900 journeyman
- b) 1000 hours Steamfitter - 100 foreman / 900 journeyman
- c) 1000 hours Electrician - 100 foreman / 900 journeyman

Start up and Testing Support Allowance On A T&M Basis, Not To Exceed \$384,000 (Not included in base bid)- Straight Time Hours for Start -up and Testing Support During Milestone C & H Durations Based on The Breakout Below,

- a) 1000 hours Boilermaker - 100 foreman /900 journeyman
- b) 1000 hours Steamfitter - 100 foreman / 900 journeyman
- c) 1000 hours Electrician - 100 foreman/ 900 journeyman

Reference Documents: 01-024\_E-22945-08\_183413.PDF

PN 22945-08 Package 3A Bid Clarification #15 Dated March 29 2013.pdf

PN 22945-08 Package 3A Bid Clarification #14 Dated March 28 2013.pdf

PN 22945-08 Package 3A Bid Clarification #13 Dated March 28 2013.pdf

PN 22945-08 Package 3A Bid Clarification #9 Dated March 26 2013.pdf

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PN 22945-08 Package 3A Bid Clarification #4 Dated March 22 2013.pdf

PN 22945-08 Package 3A Bid Clarification #3 Dated March 22 2013.pdf

PN 22945-08 Package 3A Bid Clarification #2 Dated March 15

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2013.pdf  
PN 22945-08 Package 3A Bid Clarification #1 Dated March 15  
2013.pdf  
PN 22945-08 Package 3A Bid Clarification #6 Dated March 25  
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PN 22945-08 Package 3A Bid Clarification #5 Dated March 26  
2013.pdf  
PN 22945-08 Package 3A Bid Clarification #8 Dated March 26  
2013.pdf  
PN 22945-08 Package 3A Bid Clarification #7 Dated March 26  
2013.pdf  
Con Edison Specification HP MM RevCM 31313 pkg 3a Dated  
March 13 2013.pdf  
Con Edison Specification PM MM RevCM 31313 pkg 3a Dated  
March 13 2013.pdf  
Con Edison 74th Gas Mechanical Special Conditions PN22945 08 3A  
Dated March 21 2013.pdf  
Con Edison Supplemental Construction Contract Requirements  
C-CM-003 Rev 1, June 10 2008. pdf.pdf  
PN 22945-08 Package 3A Bid Clarification #17 Dated April 03  
2013.pdf  
Con Edison PACKAGE BOILER FRONT WALL REPLACEMENT  
ADDENDUM Rev 00 Dated Janaury 2013.pdf  
Durr Mechanical Offer Compliance Exception July 22 2013.pdf  
Durr Mechanical Disclosure Form Dated July 22 2013.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)  
2 Needed:  
07/26/2013  
1 EACH 14775000.  
00  
14,775,000.0  
0  
LUMPSUM - LUMPSUM - LUMPSUM AGREEMENT  
Max Retainage Amount: 738,750.00  
Retainage Rate: 10%  
2-1 LUMPSUM - LUMPSUM -  
LUMPSUM AGREEMENT  
Needed:  
07/26/2013  
1 EACH 14775000.  
00  
14,775,000.0  
0  
Ship To:  
850 12TH AVENUE  
NEW YORK, NY 10019  
UNITED STATES  
3 Needed:  
10/08/2013  
162430.8  
6  
EACH 1.00 162,430.86  
LUMPMOD

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Line /

Pay

Item

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

(USD)

Amount

(USD)

3-1 LUMPMOD Needed:

10/08/2013

162430.8

6

EACH 1.00 162,430.86

Ship To:

4 IRVING PLACE

NEW YORK, NY 10003

UNITED STATES

Total: **14,937,430.86 (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

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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 4186790, 6

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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.

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

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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, 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

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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 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 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

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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 4186790, 6

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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

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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 4186790, 6

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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

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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 4186790, 6

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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 4186790, 6

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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



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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 4186790, 6

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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

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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 4186790, 6

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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

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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

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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 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

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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 4186790, 6

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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 4186790, 6

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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

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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 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

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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,

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 4186790, 6

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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.

## **Contains Confidential Commercial Information**

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 4186790, 6

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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 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.Contractors 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 4186790, 6



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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 4186790, 6

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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

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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 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 4186790, 6

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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

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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.

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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 Standard Purchase Order 4186790, 6

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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)

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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 4186790, 6

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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,

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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 4186790, 6

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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

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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 4186790, 6

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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 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 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



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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 4186790, 6

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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

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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.

### **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 4186790, 6

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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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### Signatures

#### Buyer Supplier

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)

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ATTACHMENT NO. 6

CONTRACTOR: PIM CORP

PURCHASE ORDER NO.: 4195820

BID COMPARISON:

\$3,000,000

**Contains Confidential Commercial Information**

Blanket Purchase Agreement 4195820, 1  
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**Consolidated Edison Company of New York, Inc.**  
**4 IRVING PLACE**  
**NEW YORK, NY 10003**  
**UNITED STATES**

Type **Blanket Purchase Agreement**

Order **4195820**

Revision **1**

PO Approved Date **10/29/2013**

Revision Date **10/29/2013**

Current Buyer **David Blaut**

Supplier: **PIM CORP**

**201 CIRCLE DR N STE 106**

**PISCATAWAY, NJ 08854**

**UNITED STATES**

Supplier

Contact:

**KOLSKI Ms. REA**

**(732) 469-6224**

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

**11262 Net 30**

Effective Start Date Effective End Date Amount Agreed (USD)

**08/01/2013 07/31/2016 3,000,000.00**

**Notes:** ConSplit – for Gas Operations, in New York City and Westchester County.

The Value of This Purchase Order is \$3,000,000.00

The Scope of Work Shall Include But Not Limited to The Following: Use Of ConSplit Technology That Will Include But Not Be Limited To The Methods Of Coating Required For New Manhole/ROV Manholes And

The Remediation Of Existing Manhole/ROV Manhole Locations. The Products Used Shall Include Descriptions Of Each Application And Detail Product Characteristics Such As Thickness, Temperature Limitations, Composition, Application Method, Curing Rates, MSDS Information Etc.

The Contractor Will Provide All Of The Following For The Work Described Below:

- Qualified Supervision And Labor
- Coating/Rehabilitative/Remediation Tools And Equipment
- Machinery To Transport And Place The Tools Into Excavations/Manholes (Excavations And Live Gas Work Completed By Con Edison)
- Job/Site Specific Health And Safety Plans
- Equipment Used Must Have Proven Track Record Of Success Working In Gas Industry Applications In An

Urban Environment

-Average Annual (See Below In Description)

-Operating In All Areas Of Con Edison Territory (Westchester, Bronx, Queens And Manhattan)

-Deployment Within 3 Days Of Scheduling

Gas Regulator/ROV Manhole (Supplied By CE) Internal Coating

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The Product Currently Used Is Raven 405. Annual Average 5,000 LFT

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Gas ROV Regulator Inside Pipe Coating, All Pipe Sizes (Supplied By CE)

The Product Currently Used Is Raven 405. Annual Average Is 200 LFT.

External Coating Of Gas Regulator/ROV Manhole Structures With Waterproof Membrane

The Product Currently Used Is Versaflex FSS45DC. The Product Utilized For External Coatings Of Gas Regulator/ROV Manholes (Supplied By CE) Shall Be A Fast Spray Polyurea Based Coating. Annual Average 5,000 LFT

Gas Regulator Manhole/ROV Sealing W/Injection Grouting Method.

The Product Currently Used Is De Neef HA CUT. The Injection Of Grout Into Manholes (Supplied By CE)

Is To Fill Voids And Repair Water Leaking Cracks. Annual Average 350 Gallons

Rehabilitation Of Existing ROV Gas Regulator Manhole Castings & Associated Items.

This Item Is For The Removal And Installation Of A New Casting Or Bilco Door (Supplied By CE) On An

Existing ROV Gas Regulator Manhole. Annual Average 3

Frame & Cover Replacement/Installation Of Internal Elastaseal For Chimney

Furnish Labor, Equipment, Materials And Supervision, To Seal The Manhole Chimney (Supplied By CE).

The Intent Of The Chimney Seal Is To Prevent Inflow From The Area Beneath The Rim Of The Manhole.

Annual Average 15

Concrete Restoration Services

The Product Currently Used Is Sika Top 123 Or Sika Top 224, Depending On Size. The Product Should Be A Fast Setting, Non-Sag Mortar For Repair Of Vertical Or Overhead Surfaces. Annual Average 100 Sq FT

External Waterproof Of Manhole Roof

The Product Currently Used Is Versaflex FSS45DC. The Product Utilized For External Coatings Of Gas Regulator/ROV Manholes Should Be A Fast Spray Polyurea Based Coating. External Coating Should Be Applied To Manhole Roofs, Including One Foot Draping Down Each Side Wall, With High Pressure Heated

Equipment Using An Impingement Gun. Annual Average 15

External Chimney Seal Using Sealing Systems Inc. Infi-Shield

The Sealing System Shall Prevent Leakage Of Water Into The Regulator Manhole/ROV Manhole Through

The Frame Joint Area And Through The Adjustment Ring Area. The Casting Shall Be Sealed To The Structure With A Uni-Band Sealing System Or Approved Equal. Annual Average 15

The Vendor Will Be Certified By The Coating Manufacturers Whose Products It Uses. The Vendor Shall Be Trained In Enclosed And Confined Spaces And In CPR And OSHA Millennium

Con Edison

Stephen Blom Bloms@Coned.Com 718/839-1758

Lenny Singh Singhl@Coned.Com 718/839-1866

PIM Corporation

REA Kolski Rkolski@Pimcorp.Com 732-469-6224

No Vendor/Contractor Can Perform Any Work Before A Site HASP is Approved By Con Edison EH&S Original Invoices and Supporting Documents Will be Forwarded to Your Con Edison Representative.

Expenditure Limitation: The Maximum expenditure Authorized under the Purchase Order is \$3,000,000.

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.

Purchase Order will be performed in accordance with the following which are incorporated herein by Blanket Purchase Agreement 4195820, 1

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reference:::

Con Edison's Terms and Conditions For Construction Contracts, Dated July 1, 2012.

Con Edison's Terms and Conditions For Indefinite Quantity, Dated July 1, 2012

Con Edison's Environmental Special Conditions For Bidders, Revision 3/1/99

Bid Tabulation Sheet Entitled "Pim Consplit Renewal", With Pricing Per Column Entitled "Unit Price Final Adjustment", As Transmitted By E-Mail Dated: June 26, 2013

Con Edison's Disclosure, Compliance And Exception Form, Signed July 17, 2013

Payment Terms::: Net 30 Days After Receipt Of Invoice Acceptable To Con Edison.

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All Over/Premium Time Labor Will Be Paid With A Factor of 1.5 See Line 159 in P/O  
The Vendor Shall Promptly Inform Con Edison In Writing (Addressed To The Name At The Top Of This Order) When Commitments Made By Con Edison Exceed 75% Of The Aforesaid  
The Contractor Shall Promptly Report Verbally To The Location's Contract Administrator And 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 Work Site, Which Results In Death, Injury Or Property Damage; Giving Details And Statements Of Witnesses. In Addition, If Death Or Serious Injury Or Damage Is Caused, The Contractor Shall Immediately Report The Accident Directly To The Location's Contractor Administrator.  
Seller/Contractor Is Required To Assure All Vehicles, Including Those Of Subcontractors Used In The Performance Of Work For Con Edison, Are Maintained In Good Working Condition And Not Leaking Any Fluids. Particular Attention Is To Be Paid, But Not Limited To, Hydraulic Systems On Vehicle. The Driver Must Immediately Notify A Con Edison Representative In The Event Of A Leak/Spill From A Vehicle Or Container Carried On A Vehicle While On Con Edison Property. Driver Must Wait For Instructions Before Moving Vehicle, Unless Field Conditions Require It, And Then, Only To The Nearest Safe Point. Driver Will Be Required To Eliminate The Leak/Spill Before Leaving Con Edison Property. Seller/Contractor Shall Be Required To Reimburse Con Edison For All Costs Associated With The Cleanup Of Leaks And Spills.  
Documentation Is Required For Expenses And Must Be Submitted With Your Invoices. Failure To Supply This Documentation May Result In Delay Of Payment.

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 08/01/2013 Daily 3000000.0  
0

Con Split  
Negotiation Line Note To Supplier  
Upload your pricing sheet as a excel file  
2 NS0208483 LINEAR

FOOT  
40.59  
PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 2" / 4"  
3 NS0208484 LINEAR 40.15

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

(USD)  
FOOT  
PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 3" / 3"  
4 NS0208485 LINEAR

FOOT  
41.03  
PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 4" / 4"  
5 NS0208486 LINEAR

FOOT  
42.77  
PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 4" / 6"  
6 NS0208487 LINEAR

FOOT  
48.68  
PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 4" / 8"  
7 NS0208488 LINEAR

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FOOT

41.89

PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 6" / 6"  
8 NS0208489 LINEAR

FOOT

42.77

PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 6" / 8"  
9 NS0208490 LINEAR

FOOT

44.78

PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 8" / 8"  
10 NS0208491 LINEAR

FOOT

50.85

PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 8" / 10"  
11 NS0208492 LINEAR

FOOT

131.50

PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 10" / 10"  
12 NS0208493 LINEAR

FOOT

139.00

PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 8" / 12"  
13 NS0208494 LINEAR 135.00

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Amount

(USD)

FOOT

PIM Consplit Pipe Splitting/Bursting Pipe Replacement Old / New (150 L.F. Daily Minimum) 12" / 12"  
14 NS0208495 LINEAR

FOOT

63.25

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
ROLLDOWN (MINIMUM 750 LNFT / PROJECT)

15 NS0208496 EACH 12500.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
MOBILIZATION

16 NS0208497 EACH 949.30

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

17 NS0208498 SET 2500.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

18 NS0208499 EACH 275.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

19 NS0208500 EACH 500.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
CONSUMABLE ITEMS

20 NS0208501 LINEAR

FOOT

75.74

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
ROLLDOWN (MINIMUM 750 LNFT / PROJECT)

21 NS0208502 EACH 15000.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP



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MOBILIZATION

22 NS0208503 EACH 1455.30

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS

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

Amount  
(USD)

AND OTHER RELATED ITEMS

23 NS0208504 SET 2500.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

24 NS0208505 EACH 275.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

25 NS0208506 EACH 750.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
CONSUMABLE ITEMS

26 NS0208507 LINEAR

FOOT

95.04

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
ROLLDOWN (MINIMUM 750 LNFT)

27 NS0208508 EACH 19000.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
MOBILIZATION

28 NS0208509 EACH 2371.60

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS

AND OTHER RELATED ITEMS

29 NS0208510 SET 2500.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

30 NS0208511 EACH 275.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

31 NS0208512 EACH 750.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
CONSUMABLE ITEMS

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(USD)

Amount  
(USD)

32 NS0208513 LINEAR

FOOT

103.60

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
ROLLDOWN (MINIMUM 750 LNFT / PROJECT)

33 NS0208514 EACH 21000.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
MOBILIZATION

34 NS0208515 EACH 4395.60

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS

AND OTHER RELATED ITEMS

35 NS0208516 EACH 2750.00

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PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS SET  
PIM ROLLDOWN CLOSE-FIT POLYETHYLENE  
LINING SERVICES OLD PIPE SIZE 10" STL/CIP BUTT FUSION PIPE CLAMP INSERTS  
36 NS0208517 SET 324.50

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
37 NS0208518 SET 1000.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
CONSUMABLE ITEMS  
38 NS0208519 LINEAR

FOOT  
115.05

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
ROLLDOWN (MINIMUM 750 LNFT /PROJECT)  
39 NS0208520 EACH 21250.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
MOBILIZATION  
40 NS0208521 EACH 5215.10

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

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(USD)

Amount  
(USD)

41 NS0208522 SET 2750.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS  
42 NS0208523 SET 385.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
43 NS0208524 SET 1000.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
CONSUMABLE ITEMS  
44 NS0208525 LINEAR

FOOT  
132.31

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
ROLLDOWN (MINIMUM 750 LNFT/PROJECT)  
45 NS0208526 EACH 25000.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
MOBILIZATION  
46 NS0208527 EACH 6875.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

47 NS0208528 SET 3000.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS  
48 NS0208529 SET 550.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
49 NS0208530 SET 1100.00

PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
CONSUMABLE ITEMS  
50 NS0208531 LINEAR

FOOT  
152.15

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PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
ROLLDOWN (MINIMUM 750 LNFT/PROJECT)  
51 NS0208532 EACH 25000.00  
PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
MOBILIZATION  
52 NS0208533 EACH 11839.30  
PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS  
53 NS0208534 SET 3000.00  
PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS  
54 NS0208535 SET 825.00  
PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
55 NS0208536 SET 1200.00  
PIM ROLLDOWN CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
CONSUMABLE ITEMS  
56 NS0208537 LINEAR  
FOOT  
75.74  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)  
57 NS0208538 EACH 5000.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
MOBILIZATION  
58 NS0208539 EACH 825.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS  
59 NS0208540 SET 2500.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS  
Blanket Purchase Agreement 4195820, 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
60 NS0208541 EACH 275.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
61 NS0208542 EACH 550.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 4" STL/CIP  
CONSUMABLE ITEMS  
62 NS0208543 LINEAR  
FOOT  
95.04  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
SUBLINE (MINIMUM 750 LNFT)/PROJECT  
63 NS0208544 EACH 7500.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
MOBILIZATION  
64 NS0208545 EACH 1265.00

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PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

65 NS0208546 SET 2500.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

66 NS0208547 EACH 275.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

67 NS0208548 EACH 750.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 6" STL/CIP  
CONSUMABLE ITEMS

68 NS0208549 LINEAR

FOOT

95.04

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)

69 NS0208550 EACH 10500.00

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(USD)

Amount

(USD)

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
MOBILIZATION

70 NS0208551 EACH 2062.50

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

71 NS0208552 SET 2500.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

72 NS0208553 EACH 275.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

73 NS0208554 EACH 750.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 8" STL/CIP  
CONSUMABLE ITEMS

74 NS0208555 LINEAR

FOOT

103.60

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)

75 NS0208556 EACH 12500.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
MOBILIZATION

76 NS0208557 EACH 3996.30

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

77 NS0208558 SET 2750.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

78 NS0208559 EACH 325.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

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Amount

(USD)

79 NS0208560 EACH 1000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 10" STL/CIP  
CONSUMABLE ITEMS

80 NS0208561 LINEAR

FOOT

115.05

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)

81 NS0208562 EACH 12500.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
MOBILIZATION

82 NS0208563 EACH 4741.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

83 NS0208564 SET 2750.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

84 NS0208565 EACH 385.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

85 NS0208566 EACH 1000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 12" STL/CIP  
CONSUMABLE ITEMS

86 NS0208567 LINEAR

FOOT

132.31

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)

87 NS0208568 EACH 15000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
MOBILIZATION

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Amount

(USD)

88 NS0208569 EACH 6875.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

89 NS0208570 SET 3000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

90 NS0208571 EACH 550.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

91 NS0208572 EACH 1100.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 16" STL/CIP  
CONSUMABLE ITEMS

92 NS0208573 LINEAR

FOOT

152.15

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)

93 NS0208574 EACH 15000.00

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PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
MOBILIZATION

94 NS0208575 EACH 11275.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

95 NS0208576 SET 3000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

96 NS0208577 EACH 825.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

97 NS0208578 EACH 1200.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 20" STL/CIP  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)

Amount

(USD)

CONSUMABLE ITEMS

98 NS0208579 LINEAR

FOOT

175.56

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 24" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)

99 NS0208580 EACH 15000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 24" STL/CIP  
MOBILIZATION

100 NS0208581 EACH 13310.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 24" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

101 NS0208582 SET 5000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 24" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS

102 NS0208583 EACH 825.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 24" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

103 NS0208584 EACH 1200.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 24" STL/CIP  
CONSUMABLE ITEMS

104 NS0208585 LINEAR

FOOT

.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 26" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)

105 NS0208586 EACH 18000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 26" STL/CIP  
MOBILIZATION

106 NS0208587 EACH 14602.50

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 26" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

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(USD)

Amount

(USD)

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107 NS0208588 SET 5000.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 26" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS  
108 NS0208589 EACH 900.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 26" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
109 NS0208590 EACH 1500.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 26" STL/CIP  
CONSUMABLE ITEMS  
110 NS0208591 LINEAR  
FOOT  
.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 30" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)  
111 NS0208592 EACH 18000.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 30" STL/CIP  
MOBILIZATION  
112 NS0208593 EACH 15565.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 30" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS  
113 NS0208594 SET 5200.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 30" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS  
114 NS0208595 EACH 900.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 30" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
115 NS0208596 EACH 1500.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 30" STL/CIP  
CONSUMABLE ITEMS  
116 NS0208597 LINEAR .00  
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Amount  
(USD)  
FOOT  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 36" STL/CIP  
SUBLINE (MINIMUM 750 LNFT/PROJECT)  
117 NS0208598 EACH 20000.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 36" STL/CIP  
MOBILIZATION  
118 NS0208599 EACH 17050.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 36" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS  
119 NS0208600 SET 5400.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 36" STL/CIP  
BUTT FUSION PIPE CLAMP INSERTS  
120 NS0208601 EACH 1000.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 36" STL/CIP  
CUSTOM-MADE INSERT STIFFENER  
121 NS0208602 EACH 1500.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 36" STL/CIP  
CONSUMABLE ITEMS  
122 NS0208603 LINEAR  
FOOT  
.00  
PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 42" STL/CIP

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SUBLINE (MINIMUM 750 LNFT/PROJECT)

123 NS0208604 EACH 25000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 42" STL/CIP  
MOBILIZATION

124 NS0208605 EACH 18590.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 42" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

125 NS0208606 SET 6000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 42" STL/CIP

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(USD)

Amount

(USD)

BUTT FUSION PIPE CLAMP INSERTS

126 NS0208607 EACH 1000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 42" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

127 NS0208608 EACH 1500.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 42" STL/CIP  
CONSUMABLE ITEMS

128 NS0208609 LINEAR

FOOT

.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 48" STL/CIP

SUBLINE (MINIMUM 750 LNFT/PROJECT)

129 NS0208610 EACH 25000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 48" STL/CIP  
MOBILIZATION

130 NS0208611 EACH 20020.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 48" STL/CIP  
VIKING JOHNSON AQUAGRIP) CUSTOM FITTING (INCLUDES VALVES, FLANGES, GASKETS  
AND OTHER RELATED ITEMS

131 NS0208612 SET 6400.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 48" STL/CIP

BUTT FUSION PIPE CLAMP INSERTS

132 NS0208613 EACH 1000.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 48" STL/CIP  
CUSTOM-MADE INSERT STIFFENER

133 NS0208614 EACH 1500.00

PIM SUBLINE CLOSE-FIT POLYETHYLENE LINING SERVICES OLD PIPE SIZE 48" STL/CIP  
CONSUMABLE ITEMS

134 NS0208615 SQUARE

FOOT

28.22

PIM MANHOLE/VAULT REPAIRS (internal): PREPARATION AND WATERPROOFING OF  
MANHOLES/VAULTS WITH EPOXY, POLYUREA OR POLYURETHANE

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(USD)

Amount

(USD)

135 NS0208616 LINEAR

FOOT

170.50

PIM MANHOLE/VAULT REPAIRS: PREPARATION AND COATING OF PIPING AND  
APPURTENANCES WITH EPOXY: 8" AND SMALLER



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136 NS0208617 LINEAR

FOOT

196.90

PIM MANHOLE/VAULT REPAIRS: PREPARATION AND COATING OF PIPING AND APPURTENANCES WITH EPOXY: 12" AND LARGER

137 NS0208618 SQUARE

FOOT

28.22

PIM MANHOLE/VAULT REPAIRS (external): PREPARATION AND WATERPROOFING OF MANHOLES/VAULTS WITH EPOXY, POLYUREA OR POLYURETHANE

138 NS0208619 EACH 6174.30

PIM MANHOLE/VAULT REPAIRS: EXTERNAL PREPARATION AND WATERPROOFING OF MANHOLE ROOF, CASTING AND ONE FOOT DOWN WALLS

139 NS0208620 EACH 330.00

PIM MANHOLE/VAULT REPAIRS: GRIT BLAST AND SEAL PIPE PENETRATIONS AND COUPLINGS THROUGH MANHOLE WALLS & ROOF

140 NS0208621 EACH 990.00

PIM MANHOLE/VAULT REPAIRS: EXTERNAL / INTERNAL MANHOLE ELASTA-SEAL CHIMNEY SEAL INSTALLATION

141 NS0208622 GALLON 170.50

PIM MANHOLE/VAULT REPAIRS: MANHOLE WATER INTRUSION SEALING BY PRESSURE INJECTION GROUTING (PLUS LABOR)

142 NS0208623 HOUR 277.20

LABOR RATE

143 NS0208624 Daily 3146.00

PIM MANHOLE/VAULT REPAIRS: COATING REMOVAL SERVICES

144 NS0208625 SQUARE

FOOT

69.58

PIM MANHOLE/VAULT REPAIRS: CONCRETE RESTORATION SERVICES (PLUS LABOR):

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

(USD)

Amount

(USD)

UP TO 2" DEEP

145 NS0208626 SQUARE

FOOT

139.16

PIM MANHOLE/VAULT REPAIRS: CONCRETE RESTORATION SERVICES (PLUS LABOR):

GREATER THAN 2" DEEP

146 NS0208627 EACH 962.50

PIM MANHOLE/VAULT REPAIRS: DEWATERING OF MANHOLES / PUMP DOWN SERVICES (PLUS LABOR)

147 NS0208628 EACH 330.00

PIM MANHOLE/VAULT REPAIRS: CASTING / BILCO DOOR REMOVAL AND DISPOSAL

148 NS0208629 EACH 2269.30

PIM MANHOLE/VAULT REPAIRS: CASTING INSTALLATION NEW

149 NS0208630 EACH 2896.30

PIM MANHOLE/VAULT REPAIRS: BILCO DOOR REPLACEMENT NEW

154 NS0208635 GALLON 185.90

PIM ADDITIONAL PRODUCTS AND SERVICES: PIMPOXY ENCAPSULATION MATERIALS, PARTS A&B

155 NS0208636 EACH 410.00

PIM ADDITIONAL PRODUCTS AND SERVICES: PIMPOXY DELIVERY SERVICE TO MANHATTAN STOREROOM - 16TH STREET YARD DRIVER AND VEHICLE

156 NS0208637 HOUR 250.00

PIM ADDITIONAL PRODUCTS AND SERVICES: 2-MAN CREW WITH VEHICLE & TOOLS

157 NS0208638 HOUR 375.00

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PIM ADDITIONAL PRODUCTS AND SERVICES: 3-MAN CREW WITH VEHICLE & TOOLS  
158 NS0208639 HOUR 500.00

PIM ADDITIONAL PRODUCTS AND SERVICES: 4-MAN CREW WITH VEHICLE & TOOLS  
159 NS0208640 HOUR .00

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(USD)  
Amount  
(USD)

PIM ADDITIONAL PRODUCTS AND SERVICES: PREMIUM TIME FACTOR FOR ALL  
OFF-HOUR AND OVERTIME WORK  
160 NS0208641 LINEAR

FOOT  
150.00

PIM ADDITIONAL PRODUCTS AND SERVICES: MAXLINER CIPP PIPELINE LINING SERVICES  
2" LINER

161 NS0208642 LINEAR  
FOOT

200.00

PIM ADDITIONAL PRODUCTS AND SERVICES: MAXLINER CIPP PIPELINE LINING SERVICES  
4" LINER

162 NS0208643 LINEAR  
FOOT

250.00

PIM ADDITIONAL PRODUCTS AND SERVICES: MAXLINER CIPP PIPELINE LINING SERVICES  
6" LINER

163 NS0210731 Daily 3605.80

PIM ADDITIONAL PRODUCTS AND SERVICES: TRUCK MOUNTED DIGITAL CCTV CAMERA  
INSPECTION SERVICES

164 NS0211165 Daily 3245.00

PIM ADDITIONAL PRODUCTS AND SERVICES: PIPELINE CLEANING/WINCHING SERVICES  
WITH BRUSH/SCRAPERS/SWABS/OR ABRASIVE CLEANING

165 NS0210732 Daily 850.00

PIM ADDITIONAL PRODUCTS AND SERVICES: PORTABLE PUSH CAMER UNIT  
166 NS0210733 Daily 4950.00

PIM ADDITIONAL PRODUCTS AND SERVICES: REMOTE INTERNAL PIPELINE PROTRUSION  
REMOVAL SERVICES 6" DIAMETER AND LARGER ONLY

167 NS0208643 LINEAR  
FOOT

250.00

PIM ADDITIONAL PRODUCTS AND SERVICES: MAXLINER CIPP PIPELINE LINING SERVICES  
6" LINER

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**Terms and Conditions**

**Standard Terms**

**Appendix A**

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### **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

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"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 4195820,

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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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### Standard Terms and Conditions for Construction Contracts

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**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**

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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.

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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 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.

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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.

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.

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 Blanket Purchase Agreement 4195820,

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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

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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 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.



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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

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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 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 Blanket Purchase Agreement 4195820,

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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

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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 Blanket Purchase Agreement 4195820,

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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

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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 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

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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 Blanket Purchase Agreement 4195820,

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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

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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 Blanket Purchase Agreement 4195820,

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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

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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



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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 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

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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, Blanket Purchase Agreement 4195820,

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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 Blanket Purchase Agreement 4195820,

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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.

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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 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

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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

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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 Blanket Purchase Agreement 4195820,

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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 Blanket Purchase Agreement 4195820,

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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 Edison and O&R shall be entitled to injunctive relief to enforce the terms of this article, in addition to their remedies at law.

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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

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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 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,



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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 Blanket Purchase Agreement 4195820,

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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 Blanket Purchase Agreement 4195820,

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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

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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  
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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

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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

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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

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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

Blanket Purchase Agreement 4195820,

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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

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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. Blanket Purchase Agreement 4195820,

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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 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

**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 Blanket Purchase Agreement 4195820,

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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: MANETTA ENTERPRISES INC DBA  
MANETTA INDUSTRIES

PURCHASE ORDER NO.: 4217276

BID COMPARISON:

\$13,541,230  
\$12,033,960  
\$14,330,478  
\$15,149,031  
\$11,430,612  
\$10,945,869

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Blanket Purchase Agreement 4217276, 1  
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**Consolidated Edison Company of New York, Inc.**

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

Type **Blanket Purchase Agreement**

Order **4217276**

Revision **1**

PO Approved Date **10/18/2013**

Revision Date **10/10/2013**

Current Buyer **David Blaut**

Supplier: **MANETTA ENTERPRISES INC DBA MANETTA INDUSTRIES**

**44-17 54TH DR  
MASPETH, NY 11378  
UNITED STATES**

Supplier

Contact:

**Manetta Mr. Rick  
(718) 9375656**

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

**6434 Immediate**

Effective Start Date Effective End Date Amount Agreed (USD)

**09/23/2013 09/22/2015 12,000,000.00**

**Notes: BRONX OIL TO GAS**

**THIS IS A 2 YEAR CONTRACT WITH CON EDISON HAVING AN OPTION TO RENEW FOR A**

**3RD YEAR**

**YEAR 1 - 9/23/13-9/22/14**

**YEAR 2 - 9/23/14-9/22/15**

**YEAR 3 (AT CON EDISON'S OPTION) - 9/23/15-9/22/16**

Pricing will remain firm for the first and second year, with escalation of 4.0% for the optional 3rd year from year one pricing.

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The scope of work includes performing replacement and installation of gas services and mains for Consolidated Edison's (CECONY) gas distribution system and supporting Oil to Gas conversions throughout the Bronx for a two year period with an option to renew for third year at Con Edison's discretion. The activities to be performed include 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  
No Vendor/Contractor can perform any work before a site specific HASP is approved by Con Edison EH&S.

ORIGINAL INVOICES AND ALL SUPPORTING DOCUMENTATIONS SHOULD BE SENT DIRECTLY TO THE CON ED AUTHORIZED REPRESENTATIVE.

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EXPENDITURE LIMITATION: THE MAXIMUM EXPENDITURE AUTHORIZED UNDER BLANKET PURCHASE AGREEMENT IS \$12,000,000. CON EDISON WILL NOT BE OBLIGATED TO PAYMENT HEREUNDER IN EXCESS OF THIS EXPENDITURE LIMITATION



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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 AGREEMENT.

This Blanket Purchase Agreement will be performed in accordance with the following which are incorporated herein by reference:

Con Edison invitation to RFQ# 148048 and all documents referenced therein  
Con Edison Amendment #1 to bid event dated 5/22/13  
Con Edison Standard Terms and Conditions of Construction Contracts dated 7/1/12  
Con Edison Supplemental Construction Contract Requirements Const-004 Rev1 6-7-2011  
Con Edison's Special Conditions of Purchase – Indefinite Quantity Contract 7/1/12  
Con Edison Trenching Manual - CONST-007 Revision Number 7 dated November, 2009  
Con Edison Gas Trenching Manual dated 7-8-11 R0  
Appendix A  
Gift Policy  
Manetta Enterprises Inc Disclosure Form dated 6/4/13  
Manetta Enterprises Inc. took no exceptions

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Notwithstanding anything to the contrary herein (including, but not limited to, the Con Edison Standard Terms and Conditions and the Trenching Manual(s), Restoration Manual and Specifications that are a part hereof), Contractor shall be responsible for furnishing, placing, maintaining and removing barricades, vehicular and pedestrian skid resistant steel plates, temporary restoration, structural steel bridges and/or timber decking at worksites and for complying with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto (collectively, "Site Protection"). Site Protection shall include, but not be limited to, protection of worksites from pedestrian and vehicular intrusion and, before any worksite is left unattended, unless appropriate barricading is installed, all excavations must be plated or temporarily restored to grade in accordance with all applicable laws, regulations and permit stipulations and Con Edison or O&R requirements relating thereto, including vehicular plating in accordance with Con Edison Road Plate Guidelines. Site Protection also includes, but is not limited to, Contractor inspections of worksites, at intervals to be determined by worksite conditions, to ensure compliance with the above Site Protection requirements and that no safety hazard exists. There shall be no separate charge or amount due for Site Protection, as any cost and expense thereof is part of the prices paid for other work hereunder.

Contractor shall be able to provide a min of three (3) Live Gas crews (3 Operator Qualified Mechanics). Contractor shall provide names and qualifications of these mechanics prior to the contract being awarded.

All parking coordination and paving restoration will be handled by Contractor.

Arborist Services will be provided by Con Edison.

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 Mike Perrino 212-460-3209 perrinom@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 Mike Perrino 212-460-3209 perrinom@coned.com.

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REVISION 1 - INCLUDES THE FOLLOWING: 1)CORRECT LINES 89-92 AND 370-373 DUE TO Blanket Purchase Agreement 4217276, 1

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AN ORACLE UPLOAD ALIGNMENT ERROR 2)CANCEL LINES 165 & 446 AND REPLACE WITH LINES 564-565 DUE TO DESCRIPTION ERROR. ALL ORIGINAL PRICING REMAINS UNCHANGED. NO OTHER CHANGES MADE TO REVISION 1.

Reference Documents: AMENDMENT 1.docx

Gas Trenching Manual dated 7-8-11 R0.pdf

Trenching Manual - Final Nov. 2009 R7.pdf

Supplemental Construction Contract Requirements-Const-004 Rev1 6-7-2011.pdf

Manetta Enterprises Inc Disclosure Form dated 6.4.13.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	NS0202068 LINEAR						
	FOOT						
	110.67						
	G1AI - INSTALL 1.25"-2", <50' - YEAR 1						
2	NS0202069 LINEAR						
	FOOT						
	106.95						
	G1AII - INSTALL 1.25"-2", >50' - YEAR 1						
3	NS0202070 LINEAR						
	FOOT						
	125.55						
	G1BI - INSTALL 3"-4", <50' - YEAR 1						
4	NS0202071 LINEAR						
	FOOT						
	116.25						
	G1BII - INSTALL 3"-4", >50' - YEAR 1						
5	NS0202072 LINEAR						
	FOOT						
	167.40						
	G1CI - INSTALL 6"-8", <50' - YEAR 1						
6	NS0202073 LINEAR						
	FOOT						
	153.45						
	G1CII - INSTALL 6"-8", >50' - YEAR 1						
7	NS0202074 LINEAR						
	FOOT						
	269.70						
	G1DI - INSTALL 10"-12", <50' B1057- YEAR 1						
8	NS0202075 LINEAR						
	FOOT						
	241.80						
	G1DII - INSTALL 10"-12", >50' - YEAR 1						
9	NS0202076 LINEAR						
	FOOT						
	136.71						
	G1PAI - INSTALL 1.25"-2", <50' - YEAR 1						
10	NS0202077 LINEAR						
	FOOT						
	125.55						
	G1PAII - INSTALL 1.25"-2", >50' - YEAR 1						
11	NS0202078 LINEAR						
	FOOT						
	147.87						
	G1PBI - INSTALL 3"-4", <50' - YEAR 1						
12	NS0202079 LINEAR						
	FOOT						
	138.57						
	G1PBII - INSTALL 3"-4", >50' - YEAR 1						
13	NS0202080 LINEAR						
	FOOT						
	181.35						
	G1PCI - INSTALL 6"-8", <50' - YEAR 1						
14	NS0202081 LINEAR						
	FOOT						
	172.05						
	G1PCII - INSTALL 6"-8", >50' - YEAR 1						

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15 NS0202082 LINEAR 288.30  
Blanket Purchase Agreement 4217276, 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
G1PDI - INSTALL 10"-12", <50' - YEAR 1  
16 NS0202083 LINEAR  
FOOT  
255.75  
G1PDII - INSTALL 10"-12", >50' - YEAR 1  
17 NS0202100 LINEAR  
FOOT  
119.00  
G2AI - INSTALL 1"-2", <50' - YEAR 1  
18 NS0202101 LINEAR  
FOOT  
106.95  
G2AII - INSTALL 1"-2", >50' - YEAR 1  
19 NS0202102 LINEAR  
FOOT  
150.00  
G2BI - INSTALL 3"-4", <50' - YEAR 1  
20 NS0202103 LINEAR  
FOOT  
134.85  
G2BII - INSTALL 3"-4", >50' - YEAR 1  
21 NS0202104 LINEAR  
FOOT  
140.00  
G2PAI - INSTALL 1"-2", <50' - YEAR 1  
22 NS0202105 LINEAR  
FOOT  
122.76  
G2PAII - INSTALL 1"-2", >50' - YEAR 1  
23 NS0202106 LINEAR  
FOOT  
170.00  
G2PBI - INSTALL 3"-4", <50' - YEAR 1  
24 NS0202107 LINEAR  
FOOT  
153.45  
G2PBII - INSTALL 3"-4", >50' - YEAR 1  
25 NS0202116 EACH 1581.00  
G1JI - 1.25" - 2" =<20' - YEAR 1  
26 NS0202117 EACH 2325.00  
G1KI - 3" - 4" =<20' - YEAR 1  
27 NS0202118 EACH 2604.00  
G1LI - 6" - 8" =<20' - YEAR 1  
28 NS0202119 EACH 4417.50  
G1MI - 10" - 12" =<20' - YEAR 1  
29 NS0202128 EACH 2750.00  
G3AI - INSERT 1"-1.25", < 50' - YEAR 1  
30 NS0202129 EACH 2697.00  
G3AII - INSERT 1"-1.25", > 50' - YEAR 1  
31 NS0202130 EACH 3400.00  
G3BI - INSERT 2", < 50' - YEAR 1  
32 NS0202131 EACH 2300.00

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G3BII - INSERT 2", > 50' - YEAR 1  
33 NS0202132 EACH 2500.00  
G3CI - INSERT 3"-4", < 50' - YEAR 1  
34 NS0202133 EACH 2800.00  
G3CII - INSERT 3"-4", > 50' - YEAR 1  
35 NS0202134 EACH 3300.00  
G3PAI - INSERT 1"-1.25", < 50' - YEAR 1  
36 NS0202135 EACH 2976.00  
G3PAII - INSERT 1"-1.25", > 50' - YEAR 1  
37 NS0202136 EACH 3500.00  
G3PBI - INSERT 2", < 50' - YEAR 1  
Blanket Purchase Agreement 4217276, 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
38 NS0202137 EACH 3162.00  
G3PBII - INSERT 2", > 50' - YEAR 1  
39 NS0202138 EACH 4000.00  
G3PCI - INSERT 3"-4", < 50' - YEAR 1  
40 NS0202139 EACH 3800.00  
G3PCII - INSERT 3"-4", > 50' - YEAR 1  
41 NS0202140 EACH 3150.00  
G3DI - INSERT 1"-1.25", < 50' - YEAR 1  
42 NS0202141 EACH 3255.00  
G3DII - INSERT 1"-1.25", > 50' - YEAR 1  
43 NS0202142 EACH 3500.00  
G3PDI - INSERT 1"-1.25", < 50' - YEAR 1  
44 NS0202143 EACH 3906.00  
G3PDII - INSERT 1"-1.25", > 50' - YEAR 1  
45 NS0202144 EACH 2325.00  
G3JI - 1" - 1.25" =<20' - YEAR 1  
46 NS0202145 EACH 2371.50  
G3KI - 2" =<20' - YEAR 1  
47 NS0202146 EACH 2750.00  
G3LI - 3" - 4" =<20' - YEAR 1  
48 NS0202147 EACH 2500.00  
G4AI - INSERT 1/2", <50' - YEAR 1  
49 NS0202148 EACH 2700.00  
G4AII - INSERT 1/2", >50' - YEAR 1  
50 NS0202149 EACH 3000.00  
G4BI - INSERT 1"-1.25", < 50' - YEAR 1  
51 NS0202150 EACH 3162.00  
G4BII - INSERT 1"-1.25", > 50' - YEAR 1  
52 NS0202151 EACH 3100.00  
G4CI - INSERT 2", <50' - YEAR 1  
53 NS0202152 EACH 3255.00  
G4CII - INSERT 2", >50' - YEAR 1  
54 NS0202153 EACH 3300.00  
G4PAI - INSERT 1/2", <50' - YEAR 1  
55 NS0202154 EACH 3348.00  
G4PAII - INSERT 1/2", >50' - YEAR 1  
56 NS0202155 EACH 3500.00  
G4PBI - INSERT 1"-1.25", < 50' - YEAR 1  
57 NS0202156 EACH 3720.00  
G4PBII - INSERT 1"-1.25", > 50' - YEAR 1  
58 NS0202157 EACH 3700.00  
G4PCI - INSERT 2", <50' - YEAR 1  
59 NS0202158 EACH 3950.00

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G4PCII - INSERT 2", >50' - YEAR 1

60 NS0202159 EACH 2325.00

G4JI - .5" =<20' - YEAR 1

61 NS0202160 EACH 2394.75

G4KI - 1" - 1.25" =<20' - YEAR 1

62 NS0202161 EACH 2511.00

G4LI - 2" =<20' - YEAR 1

63 NS0202162 EACH 2200.00

G4DI - INSERT 1/2", <50' - YEAR 1

64 NS0202163 EACH 2450.00

G4DII - INSERT 1/2", >50' - YEAR 1

65 NS0202164 EACH 2500.00

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

Amount

(USD)

G4EI - INSERT 1"-1.25", < 50' - YEAR 1

66 NS0202165 EACH 2650.00

G4EII - INSERT 1"-1.25", > 50' - YEAR 1

67 NS0202166 EACH 2450.00

G4PDI - INSERT 1/2", <50' - YEAR 1

68 NS0202167 EACH 2600.00

G4PDII - INSERT 1/2", >50' - YEAR 1

69 NS0202168 EACH 2900.00

G4PEI - INSERT 1"-1.25", < 50' - YEAR 1

70 NS0202169 EACH 3000.00

G4PEII - INSERT 1"-1.25", > 50' - YEAR 1

71 NS0202170 EACH 1116.00

G5AI - SAME AS 3A W/O EXC. - YEAR 1

72 NS0202171 EACH 1152.00

G5AII - SAME AS 3A W/O EXC. - YEAR 1

73 NS0202172 EACH 1198.08

G5BI - SAME AS 3B W/O EXC. - YEAR 1

74 NS0202173 EACH 1244.16

G5BII - SAME AS 3B W/O EXC. - YEAR 1

75 NS0202174 EACH 1350.00

G5CI - SAME AS 3C W/O EXC. - YEAR 1

76 NS0202175 EACH 1290.24

G5CII - SAME AS 3C W/O EXC. - YEAR 1

77 NS0202182 EACH 950.00

G6AI - SAME AS 4A W/O EXC. - YEAR 1

78 NS0202183 EACH 898.56

G6AII - SAME AS 4A W/O EXC. - YEAR 1

79 NS0202184 EACH 975.00

G6BI - SAME AS 4B W/O EXC. - YEAR 1

80 NS0202185 EACH 921.60

G6BII - SAME AS 4B W/O EXC. - YEAR 1

81 NS0202186 EACH 1050.00

G6CI - SAME AS 4C W/O EXC. - YEAR 1

82 NS0202187 EACH 1100.00

G6CII - SAME AS 4C W/O EXC. - YEAR 1

83 NS0202192 EACH 1300.00

G7A - WITH RESTORATION. - YEAR 1

84 NS0202193 EACH 900.00

G7B - W/O RESTORATION. - YEAR 1

85 NS0202194 EACH 400.00

GT8AC - 2"-4" CI - YEAR 1

86 NS0202195 EACH 500.00

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GT8BC - 6"-8" CI - YEAR 1  
87 NS0202196 EACH 600.00  
GT8CC - 10"-12" CI - YEAR 1  
88 NS0202197 EACH 1198.08  
GT8DC - 16"-20" CI - YEAR 1  
89 NS0202202 EACH 200.00  
GT8AP - 2"-4" PLASTIC - YEAR 1  
90 NS0202203 EACH 300.00  
GT8BP - 6"-8" PLASTIC - YEAR 1  
91 NS0202204 EACH 500.00  
GT8CP - 10"-12" PLASTIC - YEAR 1  
92 NS0202205 EACH 1612.80  
GT8E - 24" - 36" MAIN - YEAR 1  
Blanket Purchase Agreement 4217276, 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
93 NS0202206 EACH 650.00  
GT9A - 1/2" - 2" - YEAR 1  
94 NS0202207 EACH 1000.00  
GT9B - 3" - 4" - YEAR 1  
95 NS0202208 EACH 275.00  
G10A - SAME AS 9A W/O EXC. - YEAR 1  
96 NS0202209 EACH 691.20  
G10B - SAME AS 9B W/O EXC. - YEAR 1  
97 NS0202210 EACH 460.80  
G11 - COLD ROLLED BEND - YEAR 1  
98 NS0202211 EACH 345.60  
G13 - METER/REG. SET (INDOOR) - YEAR 1  
99 NS0202212 EACH 368.64  
G13R - METER/REG. SET (OUTDOOR) - YEAR 1  
100 NS0202213 EACH 125.00  
G14 - INSTALL STEEL BUMPER - YEAR 1  
101 NS0202214 EACH 1800.00  
G16A - UP TO 2" IPS - YEAR 1  
102 NS0202215 EACH 1950.00  
G16B - 3" - 4" IPS - YEAR 1  
103 NS0202216 EACH 2200.00  
G16C - 6"-8" IPS - YEAR 1  
104 NS0202217 EACH 2165.76  
G16PA - UP TO 2" IPS - YEAR 1  
105 NS0202218 EACH 2650.00  
G16PB - 3" - 4" IPS - YEAR 1  
106 NS0202219 EACH 2800.00  
G16PC - 6"-8" IPS - YEAR 1  
107 NS0202220 LINEAR  
FOOT  
23.04  
G20 - ADD. PIPE WORK - YEAR 1  
108 NS0202221 EACH 500.00  
G20A - RELOCATE METER SET - YEAR 1  
109 NS0202222 EACH 200.00  
G23A - 2"- 4" CLAMP - YEAR 1  
110 NS0202223 EACH 300.00  
G23B - 6"- 8" CLAMP - YEAR 1  
111 NS0202224 EACH 350.00  
G23C - 10"-12" CLAMP - YEAR 1  
112 NS0202227 LINEAR

**Contains Confidential Commercial Information**

FOOT

95.00

G26A - UP TO 4" - YEAR 1

113 NS0202228 LINEAR

FOOT

156.67

G26B - 6" - 8" - YEAR 1

114 NS0202229 LINEAR

FOOT

185.00

G26C - 10" - 12" - YEAR 1

115 NS0202230 LINEAR

FOOT

115.20

G26PA - UP TO 4" - YEAR 1

116 NS0202231 LINEAR

FOOT

179.71

G26PB - 6" - 8" - YEAR 1

117 NS0202232 LINEAR 193.54

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

(USD)

Amount

(USD)

FOOT

G26PC - 10" - 12" - YEAR 1

118 NS0202243 LINEAR

FOOT

110.00

G26AC - UP TO 4" - YEAR 1

119 NS0202244 LINEAR

FOOT

161.28

G26BC - 6" - 8" - YEAR 1

120 NS0202245 LINEAR

FOOT

190.00

G26CC - 10" - 12" - YEAR 1

121 NS0202246 LINEAR

FOOT

130.00

G26PAC - UP TO 4" - YEAR 1

122 NS0202247 LINEAR

FOOT

175.10

G26PBC - 6" - 8" - YEAR 1

123 NS0202248 LINEAR

FOOT

200.00

G26PCC - 10" - 12" - YEAR 1

124 NS0202249 LINEAR

FOOT

119.81

G26AA - UP TO 4" - YEAR 1

125 NS0202250 LINEAR

FOOT

156.67

G26BA - 6" - 8" - YEAR 1

**Contains Confidential Commercial Information**

126 NS0202251 LINEAR  
FOOT  
170.50  
G26CA - 10" - 12" - YEAR 1  
127 NS0202252 LINEAR  
FOOT  
138.24  
G26PAA - UP TO 4" - YEAR 1  
128 NS0202253 LINEAR  
FOOT  
184.32  
G26PBA - 6" - 8" - YEAR 1  
129 NS0202254 LINEAR  
FOOT  
198.14  
G26PCA - 10" - 12" - YEAR 1  
130 NS0202255 LINEAR  
FOOT  
105.98  
G26AWK - UP TO 4" - YEAR 1  
131 NS0202256 LINEAR  
FOOT  
147.46  
G26BWK - 6" - 8" - YEAR 1  
132 NS0202257 LINEAR  
FOOT  
179.71  
G26CWK - 10" - 12" - YEAR 1  
133 NS0202258 LINEAR  
FOOT  
82.94  
G26AE - UP TO 4" - YEAR 1  
134 NS0202259 LINEAR  
FOOT  
101.38  
G26BE - 6" - 8" - YEAR 1  
135 NS0202260 LINEAR  
FOOT  
125.00  
Blanket Purchase Agreement 4217276, 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
G26CE - 10" - 12" - YEAR 1  
136 NS0202261 LINEAR  
FOOT  
32.26  
G27AA - UP TO 2" - YEAR 1  
137 NS0202262 LINEAR  
FOOT  
46.08  
G27A - 4" - YEAR 1  
138 NS0202263 LINEAR  
FOOT  
73.73  
G27B - 6" - 8" - YEAR 1  
139 NS0202264 LINEAR  
FOOT



**Contains Confidential Commercial Information**

82.94  
G27C - 12" - YEAR 1  
140 NS0202268 LINEAR  
FOOT  
42.00  
G29A - 1-1/4" NON-PROTECTED - YEAR 1  
141 NS0202269 LINEAR  
FOOT  
47.92  
G29B - 2" NON- PROTECTED - YEAR 1  
142 NS0202270 LINEAR  
FOOT  
57.14  
G29C - 3" NON-PROTECTED - YEAR 1  
143 NS0202271 LINEAR  
FOOT  
73.73  
G29D - 4" NON- PROTECTED - YEAR 1  
144 NS0202272 LINEAR  
FOOT  
87.55  
G29E - 6" NON- PROTECTED - YEAR 1  
145 NS0202273 LINEAR  
FOOT  
100.00  
G29F - 8" NON- PROTECTED - YEAR 1  
146 NS0202274 EACH 1267.20  
G19A - 2" - 4" - YEAR 1  
147 NS0202275 EACH 1797.12  
G19B - 6"- 8" - YEAR 1  
148 NS0202276 EACH 2027.52  
G19C - 10"- 12" - YEAR 1  
149 NS0202282 EACH 2672.64  
GT18A - 2" - 4" - YEAR 1  
150 NS0202283 EACH 3317.76  
GT18B - 6"- 8" - YEAR 1  
151 NS0202284 EACH 4147.20  
GT18C - 10"- 12" - YEAR 1  
152 NS0202290 EACH 824.83  
GT35A - UP TO 8" - YEAR 1  
153 NS0202291 EACH 1013.76  
GT35B - 10" - 16" - YEAR 1  
154 NS0202292 EACH 1474.56  
GT35C - > 16" - YEAR 1  
155 NS0202293 EACH 475.00  
GT36AA - 2" - 4" SLEEVE - YEAR 1  
156 NS0202294 EACH 800.00  
GT36AB - 6" - 8" SLEEVE - YEAR 1  
157 NS0202295 EACH 900.00  
GT36B - 10" AND ABOVE SLEEVE - YEAR 1  
Blanket Purchase Agreement 4217276, 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
158 NS0202296 EACH 161.28  
GT32A - WITH SERVICE - YEAR 1  
159 NS0202297 EACH 250.00  
GT32B - STAND ALONE - YEAR 1

**Contains Confidential Commercial Information**

160 NS0202300 EACH 250.00  
GT38A - WITH SERVICE - YEAR 1  
161 NS0202304 EACH 322.56  
GT40A - WITH SERVICE - YEAR 1  
162 NS0202305 EACH 400.00  
GT40B - STAND ALONE - YEAR 1  
163 NS0202308 EACH 425.00  
G50AI - ASPHALT 2"-4" - YEAR 1  
164 NS0202309 EACH 300.00  
G50AII - ASPHALT 6"-8" - YEAR 1  
165 NS0202310 EACH 950.00  
G50AIII - ASPHALT 10"-12" - YEAR 1  
**This line CANCELED on 10-OCT-2013**  
166 NS0202311 EACH 450.00  
G50BI - EARTH 2"-4" - YEAR 1  
167 NS0202312 EACH 650.00  
G50BII - EARTH 6"-8" - YEAR 1  
168 NS0202313 EACH 750.00  
G50BIII - EARTH 10"-12" - YEAR 1  
169 NS0202314 EACH 450.00  
G50CI - CONCRETE 2"-4" - YEAR 1  
170 NS0202315 EACH 650.00  
G50CII - CONCRETE 6"-8" - YEAR 1  
171 NS0202316 EACH 900.00  
G50CIII - CONCRETE 10"-12" - YEAR 1  
172 NS0202317 EACH 400.90  
GT42A - UP TO 4" PE - YEAR 1  
173 NS0202318 EACH 500.00  
GT42B - 6" - 8"PE - YEAR 1  
174 NS0202319 EACH 750.00  
GT42C - 10" - 12" PE - YEAR 1  
175 NS0202320 EACH 825.00  
GT42D - UP TO 4" - YEAR 1  
176 NS0202321 EACH 1725.00  
GT42E - 6" - 8" - YEAR 1  
177 NS0202322 EACH 2500.00  
GT42F - 10" - 12" - YEAR 1  
178 NS0202323 CUBIC  
YARD  
440.00  
G43A - ROADWAY (NON-PROTECTED) - YEAR 1  
179 NS0202324 CUBIC  
YARD  
200.00  
G43B - EARTH - YEAR 1  
180 NS0202325 CUBIC  
YARD  
529.92  
G43PA - ROADWAY (NON-PROTECTED) - YEAR 1  
181 NS0202326 EACH 600.00  
G45A - .1 - 4.0 CUBIC YARDS - YEAR 1  
182 NS0202327 EACH 900.00  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
G45B - 4.1 - 8.0 CUBIC YARDS - YEAR 1  
183 NS0202328 EACH 1200.00

**Contains Confidential Commercial Information**

G45C - 8.1 - 15.0 CUBIC YARDS - YEAR 1  
184 NS0202329 EACH 2000.00  
G45D - 15.1 - 25.0 CUBIC YARDS - YEAR 1  
185 NS0202330 EACH 900.00  
G45PA - .1 - 4.0 CUBIC YARDS - YEAR 1  
186 NS0202331 EACH 1300.00  
G45PB - 4.1 - 8.0 CUBIC YARDS - YEAR 1  
187 NS0202332 EACH 1600.00  
G45PC - 8.1 - 15.0 CUBIC YARDS - YEAR 1  
188 NS0202333 EACH 2600.00  
G45PD - 15.1 - 25.0 CUBIC YARDS - YEAR 1  
189 NS0202334 CUBIC  
YARD  
599.04  
T50 - ROCK - YEAR 1  
190 NS0202335 CUBIC  
YARD  
160.00  
T53 - BREAK, REMOVE AND DISPOSE OF INTACT MASONRY (REMOVAL OF ABAN - YEAR 1  
191 NS0202336 CUBIC  
YARD  
125.00  
T54 - BREAK, REMOVE AND DISPOSE OF DUCT ENCLOSURES, ENCASEMENTS, W - YEAR 1  
192 NS0202337 CUBIC  
YARD  
125.00  
T55 - BREAK, REMOVE AND DISPOSE OF CONCRETE AND MASONRY IN CAR OR - YEAR 1  
193 NS0202338 CUBIC  
YARD  
125.00  
T56 - BREAK OUT REMOVE AND DISPOSE CONCRETE ENCASED STEEL PIPE. - YEAR 1  
194 NS0202339 SQUARE  
FOOT  
4.00  
T101 - FURNISH, INSTALL AND REMOVE SOLID SHEETING. - YEAR 1  
195 NS0202340 SQUARE  
FOOT  
2.00  
T102 - PLYWOOD SHEETING - YEAR 1  
196 NS0202341 SQUARE  
FOOT  
4.00  
T110 - FURNISH, PLACE, SECURE, MAINTAIN, PROTECT AND REMOVE STEEL P - YEAR 1  
197 NS0202342 SQUARE  
FOOT  
5.00  
T112 - SAME AS ITEM T110 EXCEPT PLATES MUST BE STRAP WELDED. - YEAR 1  
198 NS0202343 SQUARE  
FOOT  
13.82  
T113 - STRAPWELDBEAMSPLATES - YEAR 1  
199 NS0202344 SQUARE  
FOOT  
18.43  
60 - NO. T113 (RECESSED) - YEAR 1  
200 NS0202345 SQUARE  
FOOT  
5.53  
T114 - PLATERENTALMAINT. - YEAR 1

**Contains Confidential Commercial Information**

201 NS0202346 EACH 115.20  
T80 - TEST EXISTING FACS - YEAR 1  
202 NS0202347 LINEAR  
FOOT  
36.86  
T70 - CUT, REMOVE AND DISPOSE OF ABANDONED ELECTRICAL STEEL CONDUI - YEAR 1  
203 NS0202348 LINEAR 46.08  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
FOOT  
T70A - SAMEAST708INPIPE - YEAR 1  
204 NS0202349 LINEAR  
FOOT  
55.30  
T70B - LIKET70PIPE>16IN - YEAR 1  
205 NS0202350 EACH 825.00  
GT31A - 2" AND LESS - YEAR 1  
206 NS0202351 EACH 900.00  
GT31B - 3" - 4" - YEAR 1  
207 NS0202352 EACH 1400.00  
GT31C - 6" - 8" - YEAR 1  
208 NS0202353 EACH 2000.00  
GT31D - 10" TO 12" - YEAR 1  
209 NS0202354 EACH 1550.00  
GT31STA - 2" AND LESS - YEAR 1  
210 NS0202355 EACH 2100.00  
GT31STB - 3" - 4" - YEAR 1  
211 NS0202356 EACH 2150.00  
GT31STC - 6" - 8" - YEAR 1  
212 NS0202357 EACH 3400.00  
GT31STD - 10" TO 12" - YEAR 1  
213 NS0202358 EACH 1650.00  
GT31STAP - 2" AND LESS - YEAR 1  
214 NS0202359 EACH 2400.00  
GT31STBP - 3" - 4" - YEAR 1  
215 NS0202360 EACH 2600.00  
GT31STCP - 6" - 8" - YEAR 1  
216 NS0202361 EACH 3000.00  
GT31STDP - 10" TO 12" - YEAR 1  
217 NS0202362 EACH 1500.00  
GT31STAS - 2" AND LESS - YEAR 1  
218 NS0202363 EACH 1800.00  
GT31STBS - 3" - 4" - YEAR 1  
219 NS0202364 EACH 2700.00  
GT31STCS - 6" - 8" - YEAR 1  
220 NS0202365 EACH 4515.84  
GT31STDS - 10" TO 12" - YEAR 1  
221 NS0202366 EACH 1800.00  
GT31STASP - 2" AND LESS - YEAR 1  
222 NS0202367 EACH 2100.00  
GT31STBSP - 3" - 4" - YEAR 1  
223 NS0202368 EACH 3100.00  
GT31STCSP - 6" - 8" - YEAR 1  
224 NS0202369 EACH 5990.40  
GT31STDSP - 10" TO 12" - YEAR 1  
225 NS0202370 HOUR 93.27

**Contains Confidential Commercial Information**

T301 - LABORER/DRILLRUNNER - YEAR 1  
226 NS0202371 HOUR 30.74  
T301WD - T301WKDNDIFFRL - YEAR 1  
227 NS0202372 HOUR 20.13  
T301D - LABORER/DRILLRUNNER O/T DIF - YEAR 1  
228 NS0202373 HOUR 93.27  
T301A - FLAG PERSON W/ TOOLS - YEAR 1  
229 NS0202374 HOUR 30.74  
T301AWD - T301AOVERTIMEDIFFRL - YEAR 1  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
230 NS0202375 HOUR 20.13  
T301AD - FLGPERSONOTDIFFERENT - YEAR 1  
231 NS0202376 HOUR 103.93  
T302 - LAB FOREMAN W/TRUCK - YEAR 1  
232 NS0202377 HOUR 40.55  
T302WD - T302WKDNDIFFRL - YEAR 1  
233 NS0202378 HOUR 21.49  
T302D - LAB FOREMAN W/TRUCK O/T DIFF - YEAR 1  
234 NS0202379 HOUR 136.15  
T303 - TEAMSTER W/ DUMP TRUCK - YEAR 1  
235 NS0202380 HOUR 22.38  
T303ND - TEAMSTER,W/DUMPTRUCK NGT DIF - YEAR 1  
236 NS0202381 HOUR 33.21  
T303WD - T303WKDNDIFFRL - YEAR 1  
237 NS0202383 HOUR 21.70  
T304 - TRUCK W/ COMPRESSOR - YEAR 1  
238 NS0202384 HOUR 119.20  
T304M - ITEM 304 W/ COMPRE ENGR - YEAR 1  
239 NS0202385 HOUR 51.62  
T304MND - T304 W /NIGHT DIFF - YEAR 1  
240 NS0202386 HOUR 64.76  
T304MWD - COMPR/JHAMMERWKNDIFF - YEAR 1  
241 NS0202387 HOUR 64.76  
T304MD - T304 W/ OT DIFF - YEAR 1  
242 NS0202388 HOUR 154.19  
T305 - OPERATING ENGINEER W/ BACKHOE - YEAR 1  
243 NS0202389 HOUR 38.87  
T305ND - OPENG W/BACKHOE NGT DIFF - YEAR 1  
244 NS0202390 HOUR 81.35  
T305WD - T305WKDNDIFFRL - YEAR 1  
245 NS0202391 HOUR 81.35  
T305D - OPENG W/BACKHOE O/T DIFF - YEAR 1  
246 NS0202392 HOUR 165.96  
T305A - OPERENGR WELDER - YEAR 1  
247 NS0202393 HOUR 43.19  
T305AND - T305A W/ NGTDIFF - YEAR 1  
248 NS0202394 HOUR 90.40  
T305AWD - YEAR 1  
249 NS0202395 HOUR 90.40  
T305AD - T305A W/ OT DIFF - YEAR 1  
250 NS0202396 HOUR 137.42  
T305B - OPER ENGR MAINT MAN - YEAR 1  
251 NS0202397 HOUR 42.82  
T305BND - T305B W/ NGT DIFF - YEAR 1  
252 NS0202398 HOUR 88.89

**Contains Confidential Commercial Information**

T305BWD - YEAR 1  
253 NS0202399 HOUR 88.89  
T305BD - T305B W/ OT DIFF - YEAR 1  
254 NS0202400 HOUR 116.10  
T306 -TIMBERMAN / TOOLS / TRAN - YEAR 1  
255 NS0202401 HOUR 14.51  
T306ND - T306 W/ NGT DIFF - YEAR 1  
256 NS0202402 HOUR 34.86  
T306WD - T306WKDNDIFFRL - YEAR 1  
257 NS0202403 HOUR 23.13  
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(USD)  
Amount  
(USD)  
T306D - T306 W/ OT DIFF - YEAR 1  
258 NS0202404 EACH 500.00  
T211A - MOBILIZATION - EXCAVATION CREW - YEAR 1  
259 NS0202405 EACH 350.00  
T211B - MOBILIZATION - LIVE GAS CREW - YEAR 1  
260 NS0202406 EACH 1300.00  
T215A - EMERGENCY MOBILIZATION, EXC CREW - YEAR 1  
261 NS0202407 EACH 600.00  
T215B - EMERGENCY MOBILIZATION, LIVE GAS CREW - YEAR 1  
262 NS0202408 CUBIC  
YARD  
414.72  
T2 - STREET SURFACE - YEAR 1  
263 NS0202409 CUBIC  
YARD  
552.96  
T7R - PLAIN CONCRETE SIDEWALK / DRIVEWAY - YEAR 1  
264 NS0202410 LINEAR  
FOOT  
3.00  
T33 - SAW CUTTING - YEAR 1  
265 NS0202411 LINEAR  
FOOT  
10.00  
T33A - SAW CUTTING - YEAR 1  
266 NS0202412 LINEAR  
FOOT  
12.00  
T33B - SAW CUTTING - YEAR 1  
267 NS0202413 LINEAR  
FOOT  
23.04  
T34 - SAW CUTTING - YEAR 1  
268 NS0202414 CUBIC  
YARD  
250.00  
T31 - STREET BASE - YEAR 1  
269 NS0202415 CUBIC  
YARD  
200.00  
T32 - FURNISH CONCRETE - YEAR 1  
270 NS0202416 CUBIC  
YARD  
400.00

**Contains Confidential Commercial Information**

T2AI - SPECIAL CARE EXCAVATION - YEAR 1

271 NS0202417 CUBIC

YARD

460.80

T42 - SPECIAL HAND EXCAVATION - YEAR 1

272 NS0202418 CUBIC

YARD

1000.00

400 - WEARING COURSE - YEAR 1

273 NS0202419 CUBIC

YARD

1200.00

401 - WEARING COURSE W/ REMOVAL - YEAR 1

274 NS0202420 EACH 400.00

T170 - REGRADE VALVE BOX - YEAR 1

275 NS0202421 CUBIC

YARD

275.00

T30 - TEMPORARY MACADEM - YEAR 1

276 NS0202426 LINEAR

FOOT

737.28

GT89A - GRIND RAZOR BACK STYLE RIBS - YEAR 1

277 NS0202427 LINEAR

FOOT

737.28

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(USD)

Amount

(USD)

GT89B - GRIND SPIRAL STYLE RIBS - YEAR 1

278 NS0202432 EACH 230.40

GT91A - FUSES UP TO 4" - YEAR 1

279 NS0202433 EACH 368.64

GT91B - FUSES 6"-8" - YEAR 1

280 NS0202434 EACH 500.00

GT91C - FUSES 12"-16" - YEAR 1

281 NS0202436 CUBIC

YARD

92.16

GT94 - BACKFILL - YEAR 1

282 NS0202437 LINEAR

FOOT

110.67

G1AI - INSTALL 1.25"-2", <50' - YEAR 2

283 NS0202438 LINEAR

FOOT

106.95

G1AII - INSTALL 1.25"-2", >50' - YEAR 2

284 NS0202439 LINEAR

FOOT

125.55

G1BI - INSTALL 3"-4", <50' - YEAR 2

285 NS0202440 LINEAR

FOOT

116.25

G1BII - INSTALL 3"-4", >50' - YEAR 2

286 NS0202441 LINEAR

**Contains Confidential Commercial Information**

FOOT

167.40

G1CI - INSTALL 6"-8", <50' - YEAR 2

287 NS0202442 LINEAR

FOOT

153.45

G1CII - INSTALL 6"-8", >50' - YEAR 2

288 NS0202443 LINEAR

FOOT

269.70

G1DI - INSTALL 10"-12", <50' - YEAR 2

289 NS0202444 LINEAR

FOOT

241.80

G1DII - INSTALL 10"-12", >50' - YEAR 2

290 NS0202445 LINEAR

FOOT

136.71

G1PAI - INSTALL 1.25"-2", <50' - YEAR 2

291 NS0202446 LINEAR

FOOT

125.55

G1PAII - INSTALL 1.25"-2", >50' - YEAR 2

292 NS0202447 LINEAR

FOOT

147.87

G1PBI - INSTALL 3"-4", <50' - YEAR 2

293 NS0202448 LINEAR

FOOT

138.57

G1PBII - INSTALL 3"-4", >50' - YEAR 2

294 NS0202449 LINEAR

FOOT

181.35

G1PCI - INSTALL 6"-8", <50' - YEAR 2

295 NS0202450 LINEAR

FOOT

172.05

G1PCII - INSTALL 6"-8", >50' - YEAR 2

296 NS0202451 LINEAR

FOOT

288.30

G1PDI - INSTALL 10"-12", <50' - YEAR 2

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(USD)

Amount

(USD)

297 NS0202452 LINEAR

FOOT

255.75

G1PDII - INSTALL 10"-12", >50' - YEAR 2

298 NS0202469 LINEAR

FOOT

119.00

G2AI - INSTALL 1"-2", <50' - YEAR 2

299 NS0202470 LINEAR

FOOT

106.95



**Contains Confidential Commercial Information**

G2AII - INSTALL 1"-2", >50' - YEAR 2  
300 NS0202471 LINEAR  
FOOT  
150.00

G2BI - INSTALL 3"-4", <50' - YEAR 2  
301 NS0202472 LINEAR  
FOOT  
134.85

G2BII - INSTALL 3"-4", >50' - YEAR 2  
302 NS0202473 LINEAR  
FOOT  
140.00

G2PAI - INSTALL 1"-2", <50' - YEAR 2  
303 NS0202474 LINEAR  
FOOT  
122.76

G2PAII - INSTALL 1"-2", >50' - YEAR 2  
304 NS0202475 LINEAR  
FOOT  
170.00

G2PBI - INSTALL 3"-4", <50' - YEAR 2  
305 NS0202476 LINEAR  
FOOT  
153.45

G2PBII - INSTALL 3"-4", >50' - YEAR 2  
306 NS0202485 EACH 1581.00

G1JI - 1.25" - 2" =<20' - YEAR 2  
307 NS0202486 EACH 2325.00

G1KI - 3" - 4" =<20' - YEAR 2  
308 NS0202487 EACH 2604.00

G1LI - 6" - 8" =<20' - YEAR 2  
309 NS0202488 EACH 4417.50

G1MI - 10" - 12" =<20' - YEAR 2  
310 NS0202497 EACH 2750.00

G3AI - INSERT 1"-1.25", < 50' - YEAR 2  
311 NS0202498 EACH 2697.00

G3AII - INSERT 1"-1.25", > 50' - YEAR 2  
312 NS0202499 EACH 3400.00

G3BI - INSERT 2", < 50' - YEAR 2  
313 NS0202500 EACH 2300.00

G3BII - INSERT 2", > 50' - YEAR 2  
314 NS0202501 EACH 2500.00

G3CI - INSERT 3"-4", < 50' - YEAR 2  
315 NS0202502 EACH 2800.00

G3CII - INSERT 3"-4", > 50' - YEAR 2  
316 NS0202503 EACH 3300.00

G3PAI - INSERT 1"-1.25", < 50' - YEAR 2  
317 NS0202504 EACH 2976.00

G3PAII - INSERT 1"-1.25", > 50' - YEAR 2  
318 NS0202505 EACH 3500.00

G3PBI - INSERT 2", < 50' - YEAR 2  
319 NS0202506 EACH 3162.00

G3PBII - INSERT 2", > 50' - YEAR 2

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Amount

(USD)

320 NS0202507 EACH 4000.00

**Contains Confidential Commercial Information**

G3PCI - INSERT 3"-4", < 50' - YEAR 2  
321 NS0202508 EACH 3800.00  
G3PCII - INSERT 3"-4", > 50' - YEAR 2  
322 NS0202509 EACH 3150.00  
G3DI - INSERT 1"-1.25", < 50' - YEAR 2  
323 NS0202510 EACH 3255.00  
G3DII - INSERT 1"-1.25", > 50' - YEAR 2  
324 NS0202511 EACH 3500.00  
G3PDI - INSERT 1"-1.25", < 50' - YEAR 2  
325 NS0202512 EACH 3906.00  
G3PDII - INSERT 1"-1.25", > 50' - YEAR 2  
326 NS0202513 EACH 2325.00  
G3JI - 1" - 1.25" =<20' - YEAR 2  
327 NS0202514 EACH 2371.50  
G3KI - 2" =<20' - YEAR 2  
328 NS0202515 EACH 2750.00  
G3LI - 3" - 4" =<20' - YEAR 2  
329 NS0202516 EACH 2500.00  
G4AI - INSERT 1/2", <50' - YEAR 2  
330 NS0202517 EACH 2700.00  
G4AII - INSERT 1/2", >50' - YEAR 2  
331 NS0202518 EACH 3000.00  
G4BI - INSERT 1"-1.25", < 50' - YEAR 2  
332 NS0202519 EACH 3162.00  
G4BII - INSERT 1"-1.25", > 50' - YEAR 2  
333 NS0202520 EACH 3100.00  
G4CI - INSERT 2", <50' - YEAR 2  
334 NS0202521 EACH 3255.00  
G4CII - INSERT 2", >50' - YEAR 2  
335 NS0202522 EACH 3300.00  
G4PAI - INSERT 1/2", <50' - YEAR 2  
336 NS0202523 EACH 3348.00  
G4PAII - INSERT 1/2", >50' - YEAR 2  
337 NS0202524 EACH 3500.00  
G4PBI - INSERT 1"-1.25", < 50' - YEAR 2  
338 NS0202525 EACH 3720.00  
G4PBII - INSERT 1"-1.25", > 50' - YEAR 2  
339 NS0202526 EACH 3700.00  
G4PCI - INSERT 2", <50' - YEAR 2  
340 NS0202527 EACH 3950.00  
G4PCII - INSERT 2", >50' - YEAR 2  
341 NS0202528 EACH 2325.00  
G4JI - .5" =<20' - YEAR 2  
342 NS0202529 EACH 2394.75  
G4KI - 1" - 1.25" =<20' - YEAR 2  
343 NS0202530 EACH 2511.00  
G4LI - 2" =<20' - YEAR 2  
344 NS0202531 EACH 2200.00  
G4DI - INSERT 1/2", <50' - YEAR 2  
345 NS0202532 EACH 2450.00  
G4DII - INSERT 1/2", >50' - YEAR 2  
346 NS0202533 EACH 2500.00  
G4EI - INSERT 1"-1.25", < 50' - YEAR 2  
347 NS0202534 EACH 2650.00  
Blanket Purchase Agreement 4217276, 1  
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(USD)  
Amount  
(USD)

**Contains Confidential Commercial Information**

G4EII - INSERT 1"-1.25", > 50' - YEAR 2  
348 NS0202535 EACH 2450.00  
G4PDI - INSERT 1/2", <50' - YEAR 2  
349 NS0202536 EACH 2600.00  
G4PDII - INSERT 1/2", >50' - YEAR 2  
350 NS0202537 EACH 2900.00  
G4PEI - INSERT 1"-1.25", < 50' - YEAR 2  
351 NS0202538 EACH 3000.00  
G4PEII - INSERT 1"-1.25", > 50' - YEAR 2  
352 NS0202539 EACH 1116.00  
G5AI - SAME AS 3A W/O EXC. - YEAR 2  
353 NS0202540 EACH 1152.00  
G5AII - SAME AS 3A W/O EXC. - YEAR 2  
354 NS0202541 EACH 1198.08  
G5BI - SAME AS 3B W/O EXC. - YEAR 2  
355 NS0202542 EACH 1244.16  
G5BII - SAME AS 3B W/O EXC. - YEAR 2  
356 NS0202543 EACH 1350.00  
G5CI - SAME AS 3C W/O EXC. - YEAR 2  
357 NS0202544 EACH 1290.24  
G5CII - SAME AS 3C W/O EXC. - YEAR 2  
358 NS0202551 EACH 950.00  
G6AI - SAME AS 4A W/O EXC. - YEAR 2  
359 NS0202552 EACH 898.56  
G6AII - SAME AS 4A W/O EXC. - YEAR 2  
360 NS0202553 EACH 975.00  
G6BI - SAME AS 4B W/O EXC. - YEAR 2  
361 NS0202554 EACH 921.60  
G6BII - SAME AS 4B W/O EXC. - YEAR 2  
362 NS0202555 EACH 1050.00  
G6CI - SAME AS 4C W/O EXC. - YEAR 2  
363 NS0202556 EACH 1100.00  
G6CII - SAME AS 4C W/O EXC. - YEAR 2  
364 NS0202561 EACH 1300.00  
G7A - WITH RESTORATION. - YEAR 2  
365 NS0202562 EACH 900.00  
G7B - W/O RESTORATION. - YEAR 2  
366 NS0202563 EACH 400.00  
GT8AC - 2"-4" CI - YEAR 2  
367 NS0202564 EACH 500.00  
GT8BC - 6"-8" CI - YEAR 2  
368 NS0202565 EACH 600.00  
GT8CC - 10"-12" CI - YEAR 2  
369 NS0202566 EACH 1198.08  
GT8DC - 16"-20" CI - YEAR 2  
370 NS0202571 EACH 200.00  
GT8AP - 2"-4" PLASTIC - YEAR 2  
371 NS0202572 EACH 300.00  
GT8BP - 6"-8" PLASTIC - YEAR 2  
372 NS0202573 EACH 500.00  
GT8CP - 10"-12" PLASTIC - YEAR 2  
373 NS0202574 EACH 1612.80  
GT8E - 24" - 36" MAIN - YEAR 2  
374 NS0202575 EACH 650.00  
GT9A - 1/2" - 2" - YEAR 2  
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(USD)

**Contains Confidential Commercial Information**

Amount  
(USD)

375 NS0202576 EACH 1000.00  
GT9B - 3" - 4" - YEAR 2  
376 NS0202577 EACH 275.00  
G10A - SAME AS 9A W/O EXC. - YEAR 2  
377 NS0202578 EACH 691.20  
G10B - SAME AS 9B W/O EXC. - YEAR 2  
378 NS0202579 EACH 460.80  
G11 - COLD ROLLED BEND - YEAR 2  
379 NS0202580 EACH 345.60  
G13 - METER/REG. SET (INDOOR) - YEAR 2  
380 NS0202581 EACH 368.64  
G13R - METER/REG. SET (OUTDOOR) - YEAR 2  
381 NS0202582 EACH 125.00  
G14 - INSTALL STEEL BUMPER - YEAR 2  
382 NS0202583 EACH 1800.00  
G16A - UP TO 2" IPS - YEAR 2  
383 NS0202584 EACH 1950.00  
G16B - 3" - 4" IPS - YEAR 2  
384 NS0202585 EACH 2200.00  
G16C - 6"-8" IPS - YEAR 2  
385 NS0202586 EACH 2165.76  
G16PA - UP TO 2" IPS - YEAR 2  
386 NS0202587 EACH 2650.00  
G16PB - 3" - 4" IPS - YEAR 2  
387 NS0202588 EACH 2800.00  
G16PC - 6"-8" IPS - YEAR 2  
388 NS0202589 LINEAR  
FOOT  
23.04  
G20 - ADD. PIPE WORK - YEAR 2  
389 NS0202590 EACH 500.00  
G20A - RELOCATE METER SET - YEAR 2  
390 NS0202591 EACH 200.00  
G23A - 2"- 4" CLAMP - YEAR 2  
391 NS0202592 EACH 300.00  
G23B - 6"- 8" CLAMP - YEAR 2  
392 NS0202593 EACH 350.00  
G23C - 10"-12" CLAMP - YEAR 2  
393 NS0202594 EACH 95.00  
G24A - 4"-8" JOINT ENCAPS. - YEAR 2  
394 NS0202595 EACH 156.67  
G24B - 10"-12" JOINT ENCAPS. - YEAR 2  
395 NS0202598 LINEAR  
FOOT  
185.00  
G26C - 10" - 12" - YEAR 2  
396 NS0202599 LINEAR  
FOOT  
115.20  
G26PA - UP TO 4" - YEAR 2  
397 NS0202600 LINEAR  
FOOT  
179.71  
G26PB - 6" - 8" - YEAR 2  
398 NS0202601 LINEAR  
FOOT  
193.54

**Contains Confidential Commercial Information**

G26PC - 10" - 12" - YEAR 2

399 NS0202612 LINEAR

FOOT

110.00

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(USD)

Amount

(USD)

G26AC - UP TO 4" - YEAR 2

400 NS0202613 LINEAR

FOOT

161.28

G26BC - 6" - 8" - YEAR 2

401 NS0202614 LINEAR

FOOT

190.00

G26CC - 10" - 12" - YEAR 2

402 NS0202615 LINEAR

FOOT

130.00

G26PAC - UP TO 4" - YEAR 2

403 NS0202616 LINEAR

FOOT

175.10

G26PBC - 6" - 8" - YEAR 2

404 NS0202617 LINEAR

FOOT

200.00

G26PCC - 10" - 12" - YEAR 2

405 NS0202618 LINEAR

FOOT

119.81

G26AA - UP TO 4" - YEAR 2

406 NS0202619 LINEAR

FOOT

156.67

G26BA - 6" - 8" - YEAR 2

407 NS0202620 LINEAR

FOOT

170.50

G26CA - 10" - 12" - YEAR 2

408 NS0202621 LINEAR

FOOT

138.24

G26PAA - UP TO 4" - YEAR 2

409 NS0202622 LINEAR

FOOT

184.32

G26PBA - 6" - 8" - YEAR 2

410 NS0202623 LINEAR

FOOT

198.14

G26PCA - 10" - 12" - YEAR 2

411 NS0202624 LINEAR

FOOT

105.98

G26AWK - UP TO 4" - YEAR 2

412 NS0202625 LINEAR

**Contains Confidential Commercial Information**

FOOT

147.46

G26BWK - 6" - 8" - YEAR 2

413 NS0202626 LINEAR

FOOT

179.71

G26CWK - 10" - 12" - YEAR 2

414 NS0202627 LINEAR

FOOT

82.94

G26AE - UP TO 4" - YEAR 2

415 NS0202628 LINEAR

FOOT

101.38

G26BE - 6" - 8" - YEAR 2

416 NS0202629 LINEAR

FOOT

125.00

G26CE - 10" - 12" - YEAR 2

417 NS0202630 LINEAR

FOOT

32.26

G27AA - UP TO 2" - YEAR 2

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

(USD)

Amount

(USD)

418 NS0202631 LINEAR

FOOT

46.08

G27A - 4" - YEAR 2

419 NS0202632 LINEAR

FOOT

73.73

G27B - 6" - 8" - YEAR 2

420 NS0202633 LINEAR

FOOT

82.94

G27C - 12" - YEAR 2

421 NS0202637 LINEAR

FOOT

42.00

G29A - 1-1/4" NON-PROTECTED - YEAR 2

422 NS0202638 LINEAR

FOOT

47.92

G29B - 2" NON- PROTECTED - YEAR 2

423 NS0202639 LINEAR

FOOT

57.14

G29C - 3" NON-PROTECTED - YEAR 2

424 NS0202640 LINEAR

FOOT

73.73

G29D - 4" NON- PROTECTED - YEAR 2

425 NS0202641 LINEAR

FOOT

87.55

**Contains Confidential Commercial Information**

G29E - 6" NON- PROTECTED - YEAR 2  
426 NS0202642 LINEAR  
FOOT  
100.00  
G29F - 8" NON- PROTECTED - YEAR 2  
427 NS0202643 EACH 1267.20  
G19A - 2" - 4" - YEAR 2  
428 NS0202644 EACH 1797.12  
G19B - 6"- 8" - YEAR 2  
429 NS0202645 EACH 2027.52  
G19C - 10"- 12" - YEAR 2  
430 NS0202651 EACH 2672.64  
GT18A - 2" - 4" - YEAR 2  
431 NS0202652 EACH 3317.76  
GT18B - 6"- 8" - YEAR 2  
432 NS0202653 EACH 4147.20  
GT18C - 10"- 12" - YEAR 2  
433 NS0202659 EACH 824.83  
GT35A - UP TO 8" - YEAR 2  
434 NS0202660 EACH 1013.76  
GT35B - 10" - 16" - YEAR 2  
435 NS0202661 EACH 1474.56  
GT35C - > 16" - YEAR 2  
436 NS0202662 EACH 475.00  
GT36AA - 2" - 4" SLEEVE - YEAR 2  
437 NS0202663 EACH 800.00  
GT36AB - 6" - 8" SLEEVE - YEAR 2  
438 NS0202664 EACH 900.00  
GT36B - 10" AND ABOVE SLEEVE - YEAR 2  
439 NS0202665 EACH 161.28  
GT32A - WITH SERVICE - YEAR 2  
440 NS0202666 EACH 250.00  
GT32B - STAND ALONE - YEAR 2  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
441 NS0202669 EACH 250.00  
GT38A - WITH SERVICE - YEAR 2  
442 NS0202673 EACH 322.56  
GT40A - WITH SERVICE - YEAR 2  
443 NS0202674 EACH 400.00  
GT40B - STAND ALONE - YEAR 2  
444 NS0202677 EACH 425.00  
G50AI - ASPHALT 2"-4" - YEAR 2  
445 NS0202678 EACH 300.00  
G50AII - ASPHALT 6"-8" - YEAR 2  
446 NS0202679 EACH 950.00  
G50AIII - ASPHALT 10"-12" - YEAR 2  
**This line CANCELED on 10-OCT-2013**  
447 NS0202680 EACH 450.00  
G50BI - EARTH 2"-4" - YEAR 2  
448 NS0202681 EACH 650.00  
G50BII - EARTH 6"-8" - YEAR 2  
449 NS0202682 EACH 750.00  
G50BIII - EARTH 10"-12" - YEAR 2  
450 NS0202683 EACH 450.00  
G50CI - CONCRETE 2"-4" - YEAR 2

**Contains Confidential Commercial Information**

451 NS0202684 EACH 650.00  
G50CII - CONCRETE 6"-8" - YEAR 2  
452 NS0202685 EACH 900.00  
G50CIII - CONCRETE 10"-12" - YEAR 2  
453 NS0202686 EACH 400.90  
GT42A - UP TO 4" PE - YEAR 2  
454 NS0202687 EACH 500.00  
GT42B - 6" - 8"PE - YEAR 2  
455 NS0202688 EACH 750.00  
GT42C - 10" - 12" PE - YEAR 2  
456 NS0202689 EACH 825.00  
GT42D - UP TO 4" - YEAR 2  
457 NS0202690 EACH 1725.00  
GT42E - 6" - 8" - YEAR 2  
458 NS0202691 EACH 2500.00  
GT42F - 10" - 12" - YEAR 2  
459 NS0202692 CUBIC  
YARD  
440.00  
G43A - ROADWAY (NON-PROTECTED) - YEAR 2  
460 NS0202693 CUBIC  
YARD  
200.00  
G43B - EARTH - YEAR 2  
461 NS0202694 CUBIC  
YARD  
529.92  
G43PA - ROADWAY (NON-PROTECTED) - YEAR 2  
462 NS0202695 EACH 600.00  
G45A - .1 - 4.0 CUBIC YARDS - YEAR 2  
463 NS0202696 EACH 900.00  
G45B - 4.1 - 8.0 CUBIC YARDS - YEAR 2  
464 NS0202697 EACH 1200.00  
G45C - 8.1 - 15.0 CUBIC YARDS - YEAR 2  
465 NS0202698 EACH 2000.00  
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Amount  
(USD)  
G45D - 15.1 - 25.0 CUBIC YARDS - YEAR 2  
466 NS0202699 EACH 900.00  
G45PA - .1 - 4.0 CUBIC YARDS - YEAR 2  
467 NS0202700 EACH 1300.00  
G45PB - 4.1 - 8.0 CUBIC YARDS - YEAR 2  
468 NS0202701 EACH 1600.00  
G45PC - 8.1 - 15.0 CUBIC YARDS - YEAR 2  
469 NS0202702 EACH 2600.00  
G45PD - 15.1 - 25.0 CUBIC YARDS - YEAR 2  
470 NS0202703 CUBIC  
YARD  
599.04  
T50 - ROCK - YEAR 2  
471 NS0202704 CUBIC  
YARD  
160.00  
T53 - BREAK, REMOVE AND DISPOSE OF INTACT MASONRY (REMOVAL OF ABAN - YEAR 2  
472 NS0202705 CUBIC  
YARD



**Contains Confidential Commercial Information**

125.00

T54 - BREAK, REMOVE AND DISPOSE OF DUCT ENCLOSURES, ENCASEMENTS, W - YEAR 2  
473 NS0202706 CUBIC

YARD

125.00

T55 - BREAK, REMOVE AND DISPOSE OF CONCRETE AND MASONRY IN CAR OR - YEAR 2  
474 NS0202707 CUBIC

YARD

125.00

T56 - BREAK OUT REMOVE AND DISPOSE CONCRETE ENCASED STEEL PIPE. - YEAR 2  
475 NS0202708 SQUARE

FOOT

4.00

T101 - FURNISH, INSTALL AND REMOVE SOLID SHEETING. - YEAR 2  
476 NS0202709 SQUARE

FOOT

2.00

T102 - PLYWOOD SHEETING - YEAR 2  
477 NS0202710 SQUARE

FOOT

4.00

T110 - FURNISH, PLACE, SECURE, MAINTAIN, PROTECT AND REMOVE STEEL P - YEAR 2  
478 NS0202711 SQUARE

FOOT

5.00

T112 - SAME AS ITEM T110 EXCEPT PLATES MUST BE STRAP WELDED. - YEAR 2  
479 NS0202712 SQUARE

FOOT

13.82

T113 - STRAPWELDBEAMSPLATES - YEAR 2  
480 NS0202713 SQUARE

FOOT

18.43

60 - NO. T113 (RECESSED) - YEAR 2  
481 NS0202714 SQUARE

FOOT

5.53

T114 - PLATERENTALMAINT. - YEAR 2  
482 NS0202715 EACH 115.20

T80 - TEST EXISTING FACS - YEAR 2

483 NS0202716 LINEAR

FOOT

36.86

T70 - CUT, REMOVE AND DISPOSE OF ABANDONED ELECTRICAL STEEL CONDUI - YEAR 2  
484 NS0202717 LINEAR

FOOT

46.08

T70A - SAMEAST708INPIPE - YEAR 2  
485 NS0202718 LINEAR

FOOT

55.30

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(USD)

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(USD)

T70B - LIKET70PIPE>16IN - YEAR 2

486 NS0202719 EACH 825.00

GT31A - 2" AND LESS - YEAR 2

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487 NS0202720 EACH 900.00  
GT31B - 3" - 4" - YEAR 2  
488 NS0202721 EACH 1400.00  
GT31C - 6" - 8" - YEAR 2  
489 NS0202722 EACH 2000.00  
GT31D - 10" TO 12 " - YEAR 2  
490 NS0202723 EACH 1550.00  
GT31STA - 2" AND LESS - YEAR 2  
491 NS0202724 EACH 2100.00  
GT31STB - 3" - 4" - YEAR 2  
492 NS0202725 EACH 2150.00  
GT31STC - 6" - 8" - YEAR 2  
493 NS0202726 EACH 3400.00  
GT31STD - 10" TO 12" - YEAR 2  
494 NS0202727 EACH 1650.00  
GT31STAP - 2" AND LESS - YEAR 2  
495 NS0202728 EACH 2400.00  
GT31STBP - 3" - 4" - YEAR 2  
496 NS0202729 EACH 2600.00  
GT31STCP - 6" - 8" - YEAR 2  
497 NS0202730 EACH 3000.00  
GT31STDP - 10" TO 12" - YEAR 2  
498 NS0202731 EACH 1500.00  
GT31STAS - 2" AND LESS - YEAR 2  
499 NS0202732 EACH 1800.00  
GT31STBS - 3" - 4" - YEAR 2  
500 NS0202733 EACH 2700.00  
GT31STCS - 6" - 8" - YEAR 2  
501 NS0202734 EACH 4515.84  
GT31STDS - 10" TO 12" - YEAR 2  
502 NS0202735 EACH 1800.00  
GT31STASP - 2" AND LESS - YEAR 2  
503 NS0202736 EACH 2100.00  
GT31STBSP - 3" - 4" - YEAR 2  
504 NS0202737 EACH 3100.00  
GT31STCSP - 6" - 8" - YEAR 2  
505 NS0202738 EACH 5990.40  
GT31STDSP - 10" TO 12" - YEAR 2  
506 NS0202739 HOUR 93.27  
T301 - LABORER/DRILLRUNNER - YEAR 2  
507 NS0202740 HOUR 30.74  
T301WD - T301WKDNDIFFRL - YEAR 2  
508 NS0202741 HOUR 20.13  
T301D - LABORER/DRILLRUNNER O/T DIF - YEAR 2  
509 NS0202742 HOUR 93.27  
T301A - FLAG PERSON W/ TOOLS - YEAR 2  
510 NS0202743 HOUR 30.74  
T301AWD - T301AOVERTIMEDIFFRL - YEAR 2  
511 NS0202744 HOUR 20.13  
T301AD - FLGPERSONOTDIFFERENT - YEAR 2  
512 NS0202745 HOUR 103.93  
T302 - LAB FOREMAN W/TRUCK - YEAR 2  
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(USD)  
Amount  
(USD)  
513 NS0202746 HOUR 40.55  
T302WD - T302WKDNDIFFRL - YEAR 2

**Contains Confidential Commercial Information**

514 NS0202747 HOUR 21.49  
T302D - LAB FOREMAN W/TRUCK O/T DIFF - YEAR 2  
515 NS0202748 HOUR 136.15  
T303 - TEAMSTER W/ DUMP TRUCK - YEAR 2  
516 NS0202749 HOUR 22.38  
T303ND - TEAMSTER,W/DUMPTRUCK NGT DIF - YEAR 2  
517 NS0202750 HOUR 33.21  
T303WD - T303WKDNDIFFRL - YEAR 2  
518 NS0202752 HOUR 21.70  
T304 - TRUCK W/ COMPRESSOR - YEAR 2  
519 NS0202753 HOUR 119.20  
T304M - ITEM 304 W/ COMPRE ENGR - YEAR 2  
520 NS0202754 HOUR 51.62  
T304MND - T304 W /NIGHT DIFF - YEAR 2  
521 NS0202755 HOUR 64.76  
T304MWD - COMPR/JHAMMERWKNDIFF - YEAR 2  
522 NS0202756 HOUR 64.76  
T304MD - T304 W/ OT DIFF - YEAR 2  
523 NS0202757 HOUR 154.19  
T305 - OPERATING ENGINEER W/ BACKHOE - YEAR 2  
524 NS0202758 HOUR 38.87  
T305ND - OPENG W/BACKHOE NGT DIFF - YEAR 2  
525 NS0202759 HOUR 81.35  
T305WD - T305WKDNDIFFRL - YEAR 2  
526 NS0202760 HOUR 81.35  
T305D - OPENG W/BACKHOE O/T DIFF - YEAR 2  
527 NS0202761 HOUR 165.96  
T305A - OPERENGR WELDER - YEAR 2  
528 NS0202762 HOUR 43.19  
T305AND - T305A W/ NGTDIFF - YEAR 2  
529 NS0202763 HOUR 90.40  
T305AWD - YEAR 2  
530 NS0202764 HOUR 90.40  
T305AD - T305A W/ OT DIFF - YEAR 2  
531 NS0202765 HOUR 137.42  
T305B - OPER ENGR MAINT MAN - YEAR 2  
532 NS0202766 HOUR 42.82  
T305BND - T305B W/ NGT DIFF - YEAR 2  
533 NS0202767 HOUR 88.89  
T305BWD - YEAR 2  
534 NS0202768 HOUR 88.89  
T305BD - T305B W/ OT DIFF - YEAR 2  
535 NS0202769 HOUR 116.10  
T306 -TIMBERMAN / TOOLS / TRAN - YEAR 2  
536 NS0202770 HOUR 14.51  
T306ND - T306 W/ NGT DIFF - YEAR 2  
537 NS0202771 HOUR 34.86  
T306WD - T306WKDNDIFFRL - YEAR 2  
538 NS0202772 HOUR 23.13  
T306D - T306 W/ OT DIFF - YEAR 2  
539 NS0202773 EACH 500.00  
T211A - MOBILIZATION - EXCAVATION CREW - YEAR 2  
540 NS0202774 EACH 350.00  
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Line Part Number / Description Supplier Part# Effective Date Expires On Quantity UOM Unit Price  
(USD)  
Amount  
(USD)  
T211B - MOBILIZATION - LIVE GAS CREW - YEAR 2

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541 NS0202775 EACH 1300.00  
T215A - EMERGENCY MOBILIZATION, EXC CREW - YEAR 2  
542 NS0202776 EACH 600.00  
T215B - EMERGENCY MOBILIZATION, LIVE GAS CREW - YEAR 2  
543 NS0202777 CUBIC  
YARD  
414.72  
T2 - STREET SURFACE - YEAR 2  
544 NS0202778 CUBIC  
YARD  
552.96  
T7R - PLAIN CONCRETE SIDEWALK / DRIVEWAY - YEAR 2  
545 NS0202779 LINEAR  
FOOT  
3.00  
T33 - SAW CUTTING - YEAR 2  
546 NS0202780 LINEAR  
FOOT  
10.00  
T33A - SAW CUTTING - YEAR 2  
547 NS0202781 LINEAR  
FOOT  
12.00  
T33B - SAW CUTTING - YEAR 2  
548 NS0202782 LINEAR  
FOOT  
23.04  
T34 - SAW CUTTING - YEAR 2  
549 NS0202783 CUBIC  
YARD  
250.00  
T31 - STREET BASE - YEAR 2  
550 NS0202784 CUBIC  
YARD  
200.00  
T32 - FURNISH CONCRETE - YEAR 2  
551 NS0202785 CUBIC  
YARD  
400.00  
T2AI - SPECIAL CARE EXCAVATION - YEAR 2  
552 NS0202786 CUBIC  
YARD  
460.80  
T42 - SPECIAL HAND EXCAVATION - YEAR 2  
553 NS0202787 CUBIC  
YARD  
1000.00  
400 - WEARING COURSE - YEAR 2  
554 NS0202788 CUBIC  
YARD  
1200.00  
401 - WEARING COURSE W/ REMOVAL - YEAR 2  
555 NS0202789 EACH 400.00  
T170 - REGRADE VALVE BOX - YEAR 2  
556 NS0202790 CUBIC  
YARD  
275.00  
T30 - TEMPORARY MACADEM - YEAR 2  
557 NS0202795 LINEAR

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FOOT

737.28

GT89A - GRIND RAZOR BACK STYLE RIBS - YEAR 2

558 NS0202796 LINEAR

FOOT

737.28

GT89B - GRIND SPIRAL STYLE RIBS - YEAR 2

559 NS0202801 EACH 230.40

GT91A - FUSES UP TO 4" - YEAR 2

560 NS0202802 EACH 368.64

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

Amount

(USD)

GT91B - FUSES 6"-8" - YEAR 2

561 NS0202803 EACH 500.00

GT91C - FUSES 12"-16" - YEAR 2

562 NS0202805 CUBIC

YARD

92.16

GT94 - BACKFILL - YEAR 2

563 NS0183552 EACH 1.00

STIP FACTOR

564 NS0202310 EACH 950.00

G50AIII - ASPHALT 10"-12" - YEAR 1

565 NS0202679 EACH 950.00

G50AIII - ASPHALT 10"-12" - YEAR 2

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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 Blanket Purchase Agreement 4217276,

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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



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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 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

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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 Blanket Purchase Agreement 4217276,

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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 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 Blanket Purchase Agreement 4217276,

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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

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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 Contract, differences between the actual number of units of Work encountered and the estimated quantities of units

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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 Blanket Purchase Agreement 4217276,

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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 Blanket Purchase Agreement 4217276,

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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

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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 Blanket Purchase Agreement 4217276,

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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 Blanket Purchase Agreement 4217276,

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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

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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, 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 Blanket Purchase Agreement 4217276,

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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

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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, 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:



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- (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

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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

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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 Blanket Purchase Agreement 4217276,

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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 Blanket Purchase Agreement 4217276,

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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

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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 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:

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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 Blanket Purchase Agreement 4217276,

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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 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 Blanket Purchase Agreement 4217276,

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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

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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 Blanket Purchase Agreement 4217276,

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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

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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 Blanket Purchase Agreement 4217276,

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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

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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

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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.

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,



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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 Blanket Purchase Agreement 4217276,

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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 Blanket Purchase Agreement 4217276,

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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 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.

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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) 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 Blanket Purchase Agreement 4217276,

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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, 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

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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

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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'

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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 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

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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 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

### **Special Conditions of Purchase - Indefinite Quantity Contract**

#### **SPECIAL CONDITIONS OF PURCHASE -- INDEFINITE QUANTITY CONTRACT**

##### **1. Nature of These Special Conditions**

These Special Conditions of Purchase--Indefinite Quantity Contract relate to the goods or services specified in the Contract, for the term set forth in the Contract. Any quantities of goods or services specified in the

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Contract are estimates only and are not purchased merely by entering into the Contract.

The Contract is not a requirements contract. Con Edison reserves the right to contract with others during the term of the Contract for quantities of one or more of the items covered by the Contract, whether or not at the time Blanket Purchase Agreement 4217276,

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Con Edison has met its minimum purchase obligation as set forth below.

### **2. Maximum and Minimum Quantities**

Seller or Contractor (either of whom is hereinafter referred to in these Special Conditions of Purchase as "Seller") shall furnish such quantities of the items listed in the Contract as Con Edison may order, subject to the following limitation: where estimated quantities are stated, Seller shall supply up to one hundred twenty five percent (125%) of the estimated quantity of each item and, in consideration thereof, Con Edison shall make purchases of items under the Contract, the prices of which in the aggregate equal an amount that is at least ten percent (10%) of the total contract price for the estimated quantities. (For the avoidance of doubt, such ten percent (10%) commitment is not based upon the purchase of ten percent (10%) of each item.) If no estimated quantities are stated in the Contract, Con Edison's minimum purchase obligation shall be an amount equal to ten percent (10%) of the total authorized dollar amount stated in the Contract. The unit prices shall remain firm regardless of the quantities of each item or of all items ordered and, except for the applicable minimum purchase obligation set forth above, Con Edison shall incur no liability for items not ordered. For the avoidance of doubt, it is specifically acknowledged and agreed that the minimum purchase obligation set forth above shall not apply in the event that Con Edison exercises its rights pursuant to the Termination for Convenience provisions or the Cancellation for Default provisions, directly or indirectly, incorporated in the Contract.

### **3. Orders for Goods or Services**

Con Edison may order goods or services by issuing Standard Purchase Orders ("purchase orders") for specific quantities of goods or services to be furnished under the Contract. Delivery or performance shall only be made as authorized by the Contract.

Orders may be placed by issuing a purchase order electronically through Oracle E-Business Suite or by sending a purchase order in print form by overnight courier, mail, facsimile or e-mail. A purchase order shall be deemed issued at the time it is sent.

July 1, 2012

### **4. Terms and Conditions**

All orders shall be subject to the terms and conditions included or referenced, directly or indirectly, in the Contract.

### **5. Partial Deliveries**

The entire quantity of goods ordered in a purchase order shall be delivered in one shipment unless otherwise specified in such purchase order. A delivery of less than the entire quantity ordered in a purchase order may be rejected. If a partial delivery is accepted however, payment therefor shall not be due until the entire quantity is delivered.

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### **6. Shipping Notices**

With respect to goods ordered, Seller shall mail a shipping notice to Con Edison on the day items are shipped. Each shipment shall be accompanied by an itemized packing list that states the applicable purchase order number and the Con Edison identification number(s) of the items shipped.

### **7. Expenditure Limitation**

Seller shall not deliver the goods or perform the services specified in any purchase order if the price thereof together with the price of all previous purchase orders issued under the Contract exceeds the total expenditure authorized by the Contract, unless and until the total amount of expenditure authorized under the Contract has been increased by means of a duly executed revision or amendment to the Contract. Seller shall inform Con Edison in writing when the total price of goods or services ordered under the Contract reaches seventy-five percent (75%) of the maximum expenditure authorized by the Contract.

### **8. Completion of Performance**

Any purchase order issued under the Contract during the term of the Contract and not completed within that term, shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison with respect to such purchase order shall be governed by the terms of the Contract, as if performance of such purchase order had been completed during the effective period of the Contract.

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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  
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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.

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

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

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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 (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 Blanket Purchase Agreement 4217276,

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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**

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**Buyer Supplier**

(Authorized Representative Signature) (Authorized Representative Signature)

Name Name

(Title) (Title)

(Date) (Date)