

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2012- 065

Council Meeting Date: 01-23-2012

Date Adopted: 01-23-2012

TITLE: RESOLUTION APPROVING CONTRACT WITH RESTORE CORE, INC.
IN THE AMOUNT OF \$29, 819.98 FOR REPAIRS TO THE LIBRARY
FROM HURRICANE IRENE.

Councilperson Cucco submitted the following resolution, which was duly seconded by Councilperson Galluccio.

WHEREAS, during August 27-29, 2011, Hurricane Irene caused significant damage to the New Providence Library, resulting in an insurance claim and the need for emergent repairs, which were commenced within two business days after the Hurricane, to prevent further damage to the building and to prevent potential health issues to users of the library caused by the intrusion of water into the building, and;

WHEREAS, Selective Insurance Company engaged the services of RESTORE CORE, INC. to repair the damage caused by Hurricane Irene, and;

WHEREAS, the Local Public Contracts Law, at N.J.S.A. 40A:11-6, permits the award of a contract without public advertising notwithstanding that the price thereof will exceed the bid threshold of \$17,500; and

WHEREAS, the Mayor and Administrator determined that an emergency existed that necessitated the award of the contract with Restore Core, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey that they do hereby ratify the determination of emergency and do hereby approve the attached contract awarded by Selective Insurance Company in the amount of \$29,819.98, and authorize the Mayor and Borough Clerk to execute the same on behalf of the Borough.

APPROVED, this 23rd day of January, 2012.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUCCO	X			
GALLUCCIO	X			
GENNARO			X	
LESNEWICH	X			
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 23rd day of January, 2012.

Wendi B. Barry, Borough Clerk



RESTORATION CONTRACT: -COMMERCIAL

PA HIC Registration # 2162
Job Number: 50-1109-025N
Date :October 13, 2011

Claim Number:

This Work Authorization ("Agreement") is agreed to between:

Owner New Providence Public Works
377 Elkwood Ave
New Providence, NJ 07974

And RestoreCore, Inc.
Raritan Center
95 Newfield Avenue, Suite F
Edison, NJ 08837
Phone : (732)512-1010
Fax: 732-512-1011
www.restorecore.com

Deductible: \$-

for repairs and/or services at the following property:

New Providence Library
377 Elkwood Ave
New Providence, NJ 07974

SCOPE OF WORK: Owner agrees that RestoreCore works directly for Owner, and not any insurance company, agent or adjustor. RestoreCore shall furnish labor and material to complete the designated services and/or repairs to the building or other property required as a result of fire, water, storm or other casualty damage. All work shall be performed by RestoreCore in a good and workmanlike manner in accordance with industry standards. If necessary, RestoreCore agrees to complete an additional scope of work in accordance with insurance industry procedures, as described on any Change Order to be agreed to by RestoreCore and Owner and, if required, Owner's insurance company. Any Change Order shall be attached to this Agreement and incorporated herein verbatim.

Description of Services: ALL REPAIRS AS PER RESTORECORE ESTIMATE 9/21/11 (\$29,819.98)

PAYMENT: Owner is primarily liable for all work and shall pay any applicable deductible to RestoreCore immediately upon RestoreCore's request. Owner hereby grants RestoreCore the authority to work directly with any mortgagees of Owner and agrees to cooperate with RestoreCore and such mortgagees to provide progress payments for work performed and all required information regarding this Agreement and the work provided hereunder to Owner's insurance company.

COMMENCEMENT & COMPLETION: Work shall commence within a reasonable period of time following RestoreCore's receipt of this Agreement as signed by Owner and any necessary payment or work authorization from Owner's insurance companies. RestoreCore anticipates substantial completion within _____ days of obtaining a building permit. RestoreCore is not liable for delays due to causes beyond its control, including acts of God, strikes, labor or materials shortages or unusually severe weather.

TERMS: Owner agrees to make all payments for work performed by or at the direction of RestoreCore immediately upon Owner's receipt of each invoice from RestoreCore. Owner further agrees to make final payment of all remaining amounts immediately upon completion. Interest on any unpaid balance shall be charged at the rate of 1.5% per month. Owner shall be responsible for reasonable attorney's fees and costs in the event that collection efforts (including legal action) are required to collect any unpaid balance.

LIMITATION OF LIABILITY: The parties acknowledge that the liability of RestoreCore, if any, and Owner's sole and exclusive remedy for damages for any claim of any kind whatsoever, regardless of the legal theory and whether arising in tort or contract, shall be limited to the total amount of the payments received by RestoreCore pursuant to this Agreement. In no event shall RestoreCore (or any of its affiliates, officers, directors, employees and assigns) be liable for any special, indirect, incidental or consequential damages of any kind including, but not limited to, compensation, reimbursement or damage on account of the loss of present or prospective profits or for any other reason whatsoever. Furthermore, RestoreCore shall be responsible only for the personal property listed on the attached inventory list, if any, as signed by Owner and RestoreCore.

ASSIGNMENT: Owner, by execution of this Agreement, hereby assigns to RestoreCore such amount that is due Owner under any applicable policy of insurance. Owner hereby directs such insurance company to include "RestoreCore" as a co-payee on any draft or check to be issued to Owner in this matter and Owner agrees to endorse and immediately deliver any such draft or check to RestoreCore.

INCORPORATION: The terms and conditions on page 2 are incorporated herein verbatim.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

OWNER:

RESTORECORE:

Date

Date

TERMS AND CONDITIONS

WARRANTY: RestoreCore warrants that its work will be free from defects in material or workmanship not intrinsic in the design or materials required by the Agreement for one year commencing on the date of substantial completion, provided that RestoreCore has been paid in full for all work (herein referred to as the "Warranty").

If Owner believes that the work provided hereunder is defective in material or workmanship, then written notice with an explanation of the defect shall be given promptly by Owner to RestoreCore, but all claims for Warranty service must be reported within the Warranty period. Additional work or repair or replacement of materials shall not extend the Warranty period as to the entire work. The Warranty on additional work or repaired or replaced materials shall be in effect for a period of 90 days following the date the Warranty work is provided or the remaining period of the Warranty on the initial work, whichever is greater.

Owner's exclusive remedy and RestoreCore's sole obligation is to supply and pay for all labor and materials necessary to repair work found to be defective during the Warranty period. If additional work, repair or replacement fails to remedy the defect, then, and only in such an event, shall RestoreCore refund the fee Owner paid to RestoreCore for the work. Owner's failure to make a claim, as described in the above paragraph, shall constitute an unqualified acceptance of such work and waiver by Owner of all claims with respect thereto.

RestoreCore does not warrant that it shall completely remove any mold or that any mold remaining after completion of the work will not multiply or recur.

EXCEPTIONS TO LIMITED WARRANTY: RestoreCore shall have no liability or obligation to Owner with respect to work requiring service during the Warranty period which is subject to any of the following: abuse, improper use, water intrusion, negligence, accident, modification, failure of the end-user or Owner to regularly maintain and inspect the work, attempted repair by nonqualified personnel and, if applicable, failure of Owner to conduct third-party testing for the presence of mold within three (3) days after substantial completion of the work.

The Warranty does not cover normal wear and tear. The Warranty will be suspended until RestoreCore has been paid in full for its work. Any suspension of the Warranty shall not toll or extend the Warranty. Warranties supplied by the manufacturer will replace and take precedent over the Warranty. In the event that manufacturers' warranties may apply, Owner agrees to seek all applicable forms of redress under such manufacturers' warranties prior to making or asserting any claim against RestoreCore.

DISCLAIMER OF WARRANTY: EXCEPT FOR THE FOREGOING WARRANTIES, RESTORECORE HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY AND/OR ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

INDEMNITY: To the fullest extent permitted by law, Owner shall defend, indemnify and hold harmless RestoreCore, its affiliates, employees, officers, directors, assigns or subcontractors from all claims for bodily injury and property damage that may arise as a result, in whole or part, from the negligence or misconduct of Owner or others retained by Owner.

TERMINATION & SUSPENSION OF WORK: Upon seven (7) days' written notice to Owner, RestoreCore may terminate this Agreement if the work has been stopped for a thirty (30) day period through no fault of RestoreCore for any of the following reasons: (a) under court order or order of other governmental authority having jurisdiction; or (b) as a result of the declaration of an emergency or other governmental act during which, through no act or fault of RestoreCore, materials are not available. Furthermore, upon seven (7) days' written notice to the Owner, RestoreCore may, at RestoreCore's option, suspend performance or terminate the Agreement if Owner: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the work to be performed pursuant to this Agreement; (b) assigns this Agreement (or any rights or obligations hereunder) without RestoreCore's consent; (c) fails to pay any amount to RestoreCore within 15 days following Owner's receipt of the invoice memorializing Owner's obligation to pay such amount; or (d) otherwise materially breaches this Agreement. Upon termination of this Agreement by RestoreCore, RestoreCore shall be entitled to recover from Owner payment for all work provided and for any proven loss, cost or expense in connection with the work provided or to be provided, including all demobilization costs plus reasonable overhead and profit. Any exercise of its right to suspend performance shall not preclude RestoreCore from subsequently terminating this Agreement pursuant to the terms of this "Termination & Suspension of Work" section.

SURVIVAL: The Terms, Assignment, Limitation of Liability, Warranty, Exceptions to Limited Warranty and Disclaimer of Warranty sections shall survive the termination of this Agreement.

SEVERABILITY: In the event any provision of this Agreement shall be held invalid or unenforceable, it shall be deemed modified only to the extent necessary to make it lawful. To effect such modification, said provision shall be deemed deleted, added to and/or rewritten, whichever shall most fully preserve the intentions of the parties as originally expressed herein.

WAIVER: No failure or delay on the part of any party hereto in the exercise of any right hereunder will impair such right or be construed to be a waiver of, or acquiescence in, any breach or default, nor will any single or partial exercise of any such right preclude other or further exercise thereof or of any other right.

ENTIRE UNDERSTANDING: This Agreement (including documents specifically referenced in this Agreement) represents the entire understanding among the parties hereto with respect to the subject matter hereof, and this Agreement supersedes all previous representations, understandings, or agreements, oral or written, between the parties with respect to the subject matter hereof and cannot be modified except by a written instrument signed by the parties hereto. In reaching the agreements in this Agreement, neither party has relied upon any representation or promise, oral or written, except those set forth herein.

PAYMENT SCHEDULE: (Check if applicable) I agree to the terms of the Payment Schedule attached to this Agreement.

I have read this Terms and Conditions page.

Job #50-1109-025N

Owner's Initial's

RestoreCore's Agent's Initial's