

*** For Non-City-Owned Property Only * For Non-City-Owned Property Only ***

CAPITAL FUNDING AGREEMENT

between

**THE CITY OF NEW YORK
Acting by and through its
Department of Design and Construction**

and

[NAME OF FUNDING RECIPIENT]

*** For Non-City-Owned Property Only * For Non-City-Owned Property Only ***

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CAPITAL FUNDING AGREEMENT (“**Agreement**”) dated _____
by and between THE CITY OF NEW YORK (“**City**”), a municipal corporation organized under the laws of the State of New York (“**State**”), acting by and through its Department of Design and Construction (“**DDC**”), having an office at 30-30 Thomson Avenue, Long Island City, New York 11101, and _____ (“**Funding Recipient**”), a corporation organized under the Not-for-Profit Corporation Law of the State of New York, having its principal office at _____, New York, New York _____.

PRELIMINARY STATEMENT

1. Funding Recipient is a not-for-profit corporation organized under the laws of _____ that operates in premises (“**Premises**”) located at [address], Block ____, Lot ____ in the Borough of _____. Funding Recipient’s mission is to provide [audiences served, services offered].

2. Funding Recipient is the [Identify the owner of the Premises where the City funds will be spent. If Funding Recipient is not the owner of the Premises, describe Funding Recipient’s interest in the property, including the type of interest and the term, and its relationship to the owner. Also identify any already existing City interest in the Premises, i.e., is there a restrictive covenant already in place from a previous agreement with the City and if so, state the date the restrictive covenant was executed and filed, and the years remaining in the term. Note that only the fee owner of the Premises can grant the City a restrictive covenant. Therefore, the fee owner of the Premises is the party that must sign the Declaration.]

3. Funding Recipient proposes to undertake a project (as more fully described in Schedule I hereof, the “**Project**”) intended to enhance the activities and services that it provides at the Premises. [Ask Funding Recipient for a bullet point description of the entire Project including both the City-Funded Scope and all other work comprised by the Project and attach it as Schedule I]

4. Funding Recipient estimates that the Project will cost _____ to complete, and has requested that the City provide City capital funds in support of the Project. In response to Funding Recipient’s request, the City has agreed to provide capital funds in an amount not to exceed _____ (“**Funding**”) to reimburse Funding Recipient for costs and expenses incurred and paid by Funding Recipient in performing the City-Funded Scope in connection with the Project. For the purposes hereof, “**City-Funded Scope**” means the costs and expenses for services and construction work for the Project for which Funding Recipient intends to seek reimbursement from the City with the Funding as set forth in the Project Budget. The items included in the City-Funded Scope are identified in the Project Budget attached hereto as Exhibit A.

5. On or prior to the date hereof, Declarant (as defined in the Declaration) has executed and delivered to the City a Declaration of Restrictive Covenant (“**Declaration**”) in favor of the City pursuant to which, among other things, Declarant agrees to dedicate the Premises to the purposes of the City Purpose Covenant (as defined in the Declaration) for the duration of the Performance Term (as defined in the Declaration). In addition, Funding

Recipient and/or Declarant have submitted a counterpart of the Declaration to the Office of the City Register of the City of New York for the county where the Premises are located for recordation against the property records of the Premises.

ARTICLE 1

CERTAIN DEFINITIONS

The following terms shall have the following meanings. Additional defined terms are found in the Preamble and the Preliminary Statement hereof and throughout this Agreement:

“**Affiliate**” means (a) any Principal of Funding Recipient, (b) any Person that controls, is controlled by, or is under common control with, Funding Recipient, and (c) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse, a brother or sister of such individual or his spouse, a lineal descendant or ancestor of any of the foregoing, or a trust for the benefit of any of the foregoing.

“**Architect**” means an architectural or engineering design firm(s) engaged by Funding Recipient to provide services in connection with the Project.

“**Business Day**” means a day on which DDC is open for the conduct of its regular business, and commercial banks in New York City are not authorized or required to close.

“**Cash Flow Projection**” has the meaning provided in Section 2.03(i) hereof.

“**Certificate of Occupancy**” means any Temporary Certificate of Occupancy, any Permanent Certificate of Occupancy, or both, as the context may require.

“**Change Order**” has the meaning provided in Section 4.04(b) hereof.

“**City-Funded Scope**” means the Construction Work and other services for the Project the costs of which constitute Eligible Project Costs for which the City has agreed to reimburse Funding Recipient with the Funding. The specific items of Eligible Project Costs included in the City-Funded Scope are as set forth in the Project Budget.

“**City Purpose Covenant**” has the meaning assigned to such term in the Declaration.

“**Completion Schedule**” has the meaning provided in Section 2.03(h) hereof.

“**Compliance Report**” has the meaning provided in Section 11.01 hereof.

“**Comptroller**” means the Comptroller of The City of New York.

“**Construction Contract**” means any construction contract for the performance of Construction Work for the Project.

“**Construction Manager**” means the construction manager engaged by Funding Recipient to perform construction management services for the Project.

“**Construction Work**” means construction work performed by Contractors and other services performed or provided for the Project, the costs of which constitute Hard Costs.

“**Contractor**” means a contractor under a Construction Contract, including the General Contractor and the Construction Manager, if the Construction Manager performs Construction Work directly.

“**Cost Estimate**” has the meaning provided in Section 2.03(j) hereof.

“**Declaration**” has the meaning provided in the Preliminary Statement.

“**Default**” means any condition or event, or failure of any condition or event to occur which, after the giving of notice or the passage of time or both, would constitute an Event of Default notwithstanding that any action or further action might be capable of curing same.

“**Effective Date**” is defined in Section 2.01(b) hereof.

“**Eligible Project Costs**” means costs and expenses incurred and paid by Funding Recipient in connection with the Project that, in the sole judgment of the City (a) provide for the construction, reconstruction, acquisition or installation of a physical public betterment or improvement which would be classified as a capital asset under generally accepted accounting principles for municipalities, (b) are financeable by the City with the proceeds of tax exempt bonds pursuant to Section 11.00.a of the New York State Local Finance Law, (c) are financeable by the City with tax exempt bonds pursuant to the Internal Revenue Code of 1986, as amended, (d) are eligible for capital financing pursuant to the directives by the City Comptroller and any other applicable rules or regulations, and (e) are eligible for reimbursement with the Funding under this Agreement. The specific items of Eligible Project Costs for which the City has agreed to reimburse Funding Recipient with the Funding (i.e., the City-Funded Scope) are set forth in the Project Budget.

“**E.O. 50**” means Executive Order No. 50 (April 25, 1980) as amended, or any successor thereto and the rules and regulations promulgated thereunder.

“**Event of Default**” has the meaning provided in Section 21.01 hereof.

“**Expiration Date**” has the meaning provided in Section 2.01(b) hereof.

“**Final Completion**” has the meaning provided in Section 5.06(b) hereof.

“**Final Punch List**” has the meaning provided in Section 5.05 hereof.

“**Final Punch List Retainage**” has the meaning provided in Section 9.04(b)(iii) hereof.

“First Tier Service Contract” means a contract with a First Tier Service Provider for the performance of services in connection with the City-Funded Scope.

“First Tier Service Providers” means, collectively, all service providers for the Project, e.g., any Architect, Construction Manager, General Contractor and Contractor that are: (a) in privity of contract with Funding Recipient, (b) performing services in connection with the City-Funded Scope, and (c) intended to be paid for their services in whole or in part with the Funding, provided that, if one or more Construction Contracts are held by either the Construction Manager or General Contractor for the Project, the term First Tier Service Provider also shall include all service providers for the Project that are (aa) in privity of contract with the Construction Manager or General Contractor, as the case may be, (bb) performing services in connection with the City-Funded Scope and (cc) intended to be paid for their services in whole or in part with the Funding.

“General Contractor” means the general contractor, if any, engaged by Funding Recipient to provide services in connection with the Project.

“Governmental Authorities” means the United States of America, the State of New York, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises or any portion thereof or any street, road, avenue, sidewalk or water comprising a part of or immediately adjacent to the Premises, or any vault in or under the Premises.

“Hard Costs” means cost and expenses incurred by Funding Recipient for Construction Work in connection with the Project that are considered hard costs of construction under normal industry standards, including, without limitation: (a) payments to Contractors, subcontractors, suppliers and materialmen for labor performed and materials supplied, and (b) costs and expenses for labor, services, facilities or equipment customarily considered as "general conditions" items.

“Indemnitees” has the meaning provided in Section 13.02 hereof.

“Late Charge Rate” means the rate of interest charged by the City during the period in question for delinquent real property taxes.

“Lien” means any lien (statutory or otherwise), encumbrance, lease, easement, option, restriction, estate or other interest including, but not limited to, mechanic’s, laborer’s, materialman’s and public improvement liens, security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other similar right of others, or any other agreement to give any of the foregoing.

“Material Change Order” has the meaning provided in Section 4.04(b) hereof.

“Obligations” means the terms, covenants and conditions of this Agreement on the part of Funding Recipient to be performed, observed and/or satisfied.

“Payment Requisitions” has the meaning provided in Section 9.01(c) hereof.

“**Parties**” means the City and Funding Recipient.

“**Permits and Approvals**” has the meaning provided in Section 5.04 hereof.

“**Person**” means an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Premises**” has the meaning provided in the Preliminary Statement hereof.

“**Principal(s)**” means, with respect to juridical Persons: (a) the members of such Person’s governing body, (b) the chief executive officer of such Person, (c) the chief financial officer of such Person, (d) the chief operating officer of such Person, and (e) any individual holding equivalent positions.

“**Project Budget**” has the meaning provided in Section 8.03 hereof.

“**Project Improvements**” means the improvements and betterments constructed in connection with the Project.

“**Quarterly Reporting Period**” means the quarterly periods which conclude, respectively, on each March 31st, June 30th, September 30th and December 31st of each calendar year comprised by the Term.

“**Requirements**” means (a) any and all Federal, State and City laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements applicable (now or at any time during the Term) to the Premises and/or to the Project including, without limitation, the Green Building Standards Law (New York City Charter Section 224.1 and Chapter 10 of Title 43 of the Rules of the City of New York), Ultra Low Sulfur Diesel Fuel Law (N.Y.C. Admin. Code Section 24-163.3), Environmental Purchasing Law (N.Y.C. Admin. Code Sections 6-301 et. seq.), Purchase of Products with Recycled Contents (N.Y.C. Administrative Code Section 6-308 et. seq.), Environmentally Preferable Purchasing (N.Y.C. Admin. Code Section 6-311 et. seq. and Section 6-306 et. seq.), Living Wage Law (N.Y.C. Admin. Code Section 6-109), the New York City Noise Control Code (N.Y.C. Admin. Code Sections 24-201, et. seq.), as amended, the regulations of the Department of Environmental Protection (N.Y.C. Admin. Code Sections 24-230, 24-242) and the Building Code (N.Y.C. Admin. Code Section 27-101 et. Seq.); (b) any Certificate of Occupancy issued for the Premises or any portion thereof as in effect from time to time; and (c) all Permits and Approvals issued by Governmental Authorities in connection with the Project.

“**Retainage**” has the meaning provided in Section 9.04(a) hereof.

“**State**” has the meaning provided in the Preamble hereof.

“**Substantial Completion**” has the meaning provided in Section 5.05 hereof.

“**Term**” has the meaning provided in Section 2.01(a) hereof.

“**Total Project Costs**” means all costs and expenses that Funding Recipient anticipates that it will incur and pay for design, development and construction of the Project Improvements in accordance with the Final Plans and Specifications, whether or not such costs and expenses constitute Eligible Project Costs. Total Project Costs must include a 15% contingency, and are more fully described in the Project Budget.

“**Trade Coordination Schedule**” has the meaning provided in Section 5.02 hereof.

“**Transactional Documents**” means, collectively, this Agreement, the Architect’s Contract, the Construction Management Contract and the Construction Contracts and each and every agreement, document or indenture by which Funding Recipient or any Affiliate is bound relating to or materially affecting the financing or construction of the Project Improvements, or the leasing, possession, or occupancy of the Premises or the use of the Premises in accordance with the City Purpose Covenant.

“**Tropical Hardwoods**” has the meaning provided in Section 165 of the New York State Finance Law.

“**Unavoidable Delays**” means delays beyond the reasonable control of Funding Recipient including, without limitation, delays due to (a) strikes, slowdowns, walkouts, lockouts and work stoppages, acts of God, terrorism, severe weather conditions, inability to obtain labor and materials at competitive prices and rates, extra-ordinary delays in insurance adjustment or collection, enemy action, civil commotion, fire, casualty or other similar causes; or (b) the delay of any Governmental Authority to grant any discretionary Permits and Approvals required for the Project, provided that in each case Funding Recipient has submitted a complete application for, and has made diligent and good faith efforts to comply with all conditions of the Governmental Authority granting, such Permits and Approvals. Notwithstanding the foregoing, an Unavoidable Delay shall be deemed to have occurred (x) only to the extent that despite the reasonable efforts of Funding Recipient, Funding Recipient has been unable to prevent or mitigate such Unavoidable Delays; and (y) in each case Funding Recipient shall have notified the City in writing not later than thirty (30) days after Funding Recipient first had any knowledge of the occurrence of the delay. In addition, it is understood and agreed that Funding Recipient's financial condition or inability to obtain financing shall not constitute an Unavoidable Delay and the denial by a Governmental Authority to grant a Permit and Approval required by the Project beyond any right of appeal shall terminate the Unavoidable Delay.

ARTICLE 2

TERM

Section 2.01. Term.

(a) The term (“**Term**”) of this Agreement shall commence on the Effective Date and, except as to those provisions that expressly survive the termination or expiration hereof, shall expire on the Expiration Date, unless sooner terminated by the City as provided below.

(b) For the purposes hereof, the following terms have the following meanings:

“**Effective Date**” means the earliest date on which all of the conditions precedent set forth in Sections 2.02, 2.03 and 2.04 below shall have occurred and/or shall have been satisfied. The disbursement of any portion of the Funding by the City shall constitute the City’s acknowledgment that said conditions precedent have been satisfied as of the date of said disbursement, it being understood and agreed that the conditions precedent set forth in Section 2.02, below, must also be satisfied prior to each disbursement of the Funding.

“**Expiration Date**” means the later to occur of the following: (a) one month after Final Completion, (b) the date on which Funding Recipient shall have performed in full all of its Obligations hereunder, and (c) the date on which the Funding, including, without limitation, any Retainage and Final Punch List Retainage shall have been disbursed to Funding Recipient to the extent required by this Agreement; provided that, if the City exercises its right to terminate this Agreement pursuant to any provision of this Agreement granting such right to the City, the Expiration Date shall be the date on which such termination becomes effective in accordance with such provision.

Section 2.02. Financial Conditions Precedent. The occurrence of the following shall be conditions precedent to the occurrence of the Effective Date and each disbursement of the Funding:

(a) Sufficient Funds. The City shall have determined that, in its sole and absolute discretion, Funding Recipient has sufficient funds and other financial resources (such as enforceable pledges and binding loan commitments from lending institutions) to undertake the Project to completion. In this connection, Funding Recipient shall submit to the City upon request evidence reasonably satisfactory to the City that Funding Recipient has sufficient funds and other financial resources, including, but not limited to, bank statements and copies of such enforceable pledges and binding financial commitments.

(b) No Material Adverse Change. The City shall have determined that, in its sole and absolute discretion, there has not occurred a material adverse change in the condition (financial or otherwise), business, operations or prospects, of Funding Recipient since the date of the City’s appropriation of the Funding. In this connection, Funding Recipient shall submit to the City upon request audited financial statements of Funding Recipient and other evidence reasonably satisfactory to the City that evidences the condition (financial and otherwise), business, operations and prospects of Funding Recipient.

Section 2.03. Documentary Conditions Precedent. Delivery of the following instruments, documents and forms to the City shall be conditions precedent to the occurrence of the Effective Date:

(a) The Declaration. Evidence that the Declaration has been recorded against the property records of the Premises with the Office of the New York City Register for the county where the Premises are located. All costs and expenses incurred in connection with the recordation of the Declaration shall be paid by Funding Recipient at its sole cost and expense.

(b) Title Insurance Policy. A title policy from a reputable title insurer licensed to do business in New York and otherwise satisfactory to the City (the “**Title Company**”) insuring the Declaration for the benefit of the City as senior to and having priority over all Liens in the Premises (including any remainders and reverters) (“**Title Policy**”). All costs and expenses incurred in connection with the Title Policy including, but not limited to, any premium charged by the Title Company, shall be paid by Funding Recipient at its sole cost and expense.

(c) Opinion of Counsel. An opinion of counsel to Funding Recipient issued to both the City in substantially the form attached hereto as Exhibit F.

(d) Insurance Policies. Certificates evidencing the insurance policies described in Exhibit B, satisfactory to the City in form and substance; provided, however, that, upon request, Funding Recipient shall deliver to the City copies of the policies evidenced by such certificates.

(e) VENDEX Questionnaires. Properly completed VENDEX Questionnaires.

(f) Employment Reports. Properly completed Employment Reports in a form prescribed by the City with respect all Persons required to submit such Employment Reports under E.O.50 and procured prior to registration of the Agreement with the Comptroller.

(g) EFT Vendor Payment Enrollment Form. Properly completed EFT Vendor Payment Enrollment Form in the form required by the City.

(h) Completion Schedule. A Completion Schedule satisfactory to the City in form and substance. For the purposes hereof “**Completion Schedule**” means a schedule and timetable for the commencement, design, construction and completion of each element of the Project. The Completion Schedule must include a true and complete list of all required Permits and Approvals for each stage of the Project and for the use and occupancy of the Premises as improved by the Project Improvements for the purposes of the City Purpose Covenant.

(i) Cash Flow Projection. A Cash Flow Projection satisfactory to the City in form and substance. For the purposes hereof “**Cash Flow Projection**” means a reasonably detailed projection of the amount of the Funding that Funding Recipient anticipates it will requisition from the City each month for each item of Eligible Project Costs to be incurred and paid by Funding Recipient in connection with the City-Funded Scope during the Term of this Agreement.

(j) Cost Estimate. A Cost Estimate satisfactory to the City in form and substance. For the purposes hereof “**Cost Estimate**” means a cost estimate for Construction Work to be performed in connection with the Project formatted in accordance with the most recent Construction Specifications Institute standards.

Section 2.04. Procedural Conditions Precedent. The occurrence of the following shall be conditions precedent to the occurrence of the Effective Date:

(a) Execution and Delivery. Each of the City and Funding Recipient shall have unconditionally executed and delivered this Agreement.

(b) Registration by Comptroller. This Agreement shall have been registered by the Comptroller pursuant to City procedures.

ARTICLE 3

MEETINGS, PRESENTATIONS AND DISCUSSIONS

Section 3.01. Meetings. Funding Recipient shall give notice to the City of the occurrence of all meetings related to the Project (including, but not limited to, the Project kick-off meeting and all design meetings) as soon as practicable prior to the occurrence thereof, and shall invite the City, at the City's discretion, to attend and participate fully in all discussions that take place at such meetings.

Section 3.02. Presentations. At the request of the City, Funding Recipient shall, and shall cause the Architect and other relevant service providers for the Project to, make presentations and prepare written materials for distribution to the City to explain how the Project will facilitate Funding Recipient's mission and compliance with the City Purpose Covenant and to answer questions that the City may have about any aspect of the Project, including, without limitation, the Description of the Project attached hereto as Schedule I, the Plans and Specifications, the Cost Estimate, the Cash Flow Projection and the Completion Schedule. Such presentations shall take at a time and place reasonably satisfactory to the City.

ARTICLE 4

PLANS AND SPECIFICATIONS; CHANGE ORDERS

Section 4.01. City's Discretionary Review and Approval of Plans and Specifications.

(a) Funding Recipient shall undertake the design development for the Project (i.e., the preparation of Plans and Specifications) with diligence and continuity in order to satisfy the milestones and timetables set forth in the Completion Schedule.

(b) The City reserves the right, in its sole and absolute discretion, to review and/or approve any or all stages of the development of the Plans and Specifications for the Project (i.e., the Schematic Plans and Specifications, the Design Development Documents and the Final Plans and Specifications and any other design documents developed for the Project).

(c) If the City exercises its option to review and approve all or any stage of the development of the Plans and Specifications, Funding Recipient shall deliver to the City for the City's prior review and approval all stages of development of the Plans and Specifications for the Project required by the City and will refrain from undertaking any Construction Work contemplated by such Plans and Specifications until the City shall have signified in writing its approval thereof.

(d) It is understood and agreed that the City may, in its sole and absolute discretion, deny reimbursement to Funding Recipient for any costs and expenses incurred by Funding Recipient for the development of Plans and Specifications and/or related Construction Work that were not approved by the City as required hereunder.

(e) For the purposes of this Agreement, the following terms shall have the following meanings:

“Schematic Plans and Specifications” means the schematic drawings, outline specifications and other document that indicate the overall scope and intent of the Project Improvements as well as the scale, general layout and character of the Project Improvements and its components.

“Design Development Documents” means the progress drawings and plans and specifications for the construction of the Project Improvements, which fix and describe all elements of the design (including, but not limited to, all components of the structural, mechanical, electrical and plumbing systems, architectural finishes, thermal and moisture protection, doors, windows, elevators and other means of conveyance and special equipment).

“Final Plans and Specifications” means the completed final working drawings and specifications i.e., those plans and specifications on which bid documents for the Project are based, which set forth in detail (and clearly and unambiguously) all requirements for the construction of the Project Improvements including, but not limited to: (a) the structure, partitions, entrances, flooring, ceilings, all systems of the Improvements (including mechanical, electrical, communication, fire protection, plumbing, heating, ventilating and air-conditioning systems and installations), and (b) all architectural finishes, fixtures, appliances and other equipment to be incorporated in the Project Improvements, utilities (and utility connections), and all other elements of the Project Improvements.

Section 4.02. Submission of Final Plans and Specifications. Even if the City does not exercise its option to review and/or approve any or all stages of the design development for the Project, promptly, upon request by the City, Funding Recipient shall deliver to the City a true and complete set of the Final Plans and Specifications.

Section 4.03. No Revisions to Plans and Specifications. Funding Recipient shall not substantially revise or change any stage of the Plans and Specifications previously approved by the City pursuant to Section 4.01 hereof and/or the Final Plans and Specifications delivered to the City as required by Section 4.02 hereof, and shall not undertake any Construction Work based on any such revisions or changes without having obtained the prior written consent of the City, if such revision or change and/or related Construction Work involves: (a) a Material Change Order or (b) an amendment to the Project Budget. It is understood and agreed that the City, may, in its sole and absolute discretion, deny reimbursement to Funding Recipient for any costs and expenses incurred by Funding Recipient in connection with any unauthorized changes to any stage of the Plans and Specifications and/or related Construction Work.

Section 4.04. Material Change Orders.

(a) Funding Recipient shall not permit any work to be performed in connection with a Material Change Order without first making a good faith effort to obtain the City's written approval thereof. It is understood and agreed that the City may, in its sole and absolute discretion, deny reimbursement to Funding Recipient for costs and expenses incurred by Funding Recipient in connection with any Material Change Order not previously authorized by the City. In addition, if the City determines, in its sole reasonable discretion, that costs and expenses associated with a Material Change Order may increase Total Project Costs, or the costs associated with the City-Funded Scope, at the request of the City, Funding Recipient shall provide satisfactory evidence to the City that Funding Recipient has sufficient additional funds or other financial resources (such as enforceable pledges and binding commitments from lending institutions) to undertake the Project to completion.

(b) For the purposes hereof, the following terms shall have the following meanings:

“Change Order” means any revision or change to the Final Plans and Specifications or to a Construction Contract.

“Material Change Order” means a Change Order that satisfies one or more of the following criteria: The Change Order in question (a) individually or in the aggregate with all other Change Orders increases the Project Budget by ten percent (10%) of the Funding; (b) may impair the use of the Premises for the purposes authorized by the City Purpose Covenant; (c) materially changes the design, appearance, finish or configuration of the Premises, or the type of materials, workmanship or construction of the Project Improvements, as described in the Final Plans and Specifications; (d) may increase Total Project Costs or impact the costs and expenses of the City-Funded Scope; (e) may delay the date for Substantial Completion of the Project as set forth in the Completion Schedule; and/or (f) may result in personal injury to a member of the public or damage to his/her property.

ARTICLE 5

CONSTRUCTION WORK

Section 5.01. Performance of Construction Work. Funding Recipient shall undertake the Construction Work with diligence and continuity so as to reach Final Completion of the Project in accordance with the milestones and timetables set forth in the Completion Schedule. All Construction Work for the Project shall be undertaken in a good and workmanlike manner and in accordance with applicable Requirements and the Final Plans and Specifications. All materials and equipment utilized in connection with the construction of the Project Improvements shall be new and in good condition, fully operational, without patent or latent defects and suitable for their intended use. At all times during the performance of the Project, Funding Recipient shall maintain the Premises in a neat and orderly condition and shall protect the Premises against deterioration, loss, damage and theft.

Section 5.02. Trade Coordination Schedule. Prior to undertaking any Construction Work (whether included in the City-Funded Scope or otherwise), Funding Recipient shall submit to the City a Trade Coordination Schedule reasonably satisfactory to the City in form and substance. For the purposes hereof “**Trade Coordination Schedule**” means an integrated schedule that sets forth a critical path for the sequence and inter-relationship of the operations to be undertaken by all Contractors and subcontractors in connection with the Project, including the duration of all such operations indicating the flow of work.

Section 5.03. Payment and Performance Bonds.

(a) Prior to undertaking any Construction Work (whether included in the City-Funded Scope or otherwise) Funding Recipient shall submit to the City payment and performance bonds that satisfy the criteria set forth below such that, at all times until Final Completion of all Construction Work for the Project, the payment and performance obligations of all the trade Contractors for the Project (including, those trade Contractors not included in the City-Funded Scope) with Construction Contracts having a contract price of Two Hundred Fifty Thousand Dollars (\$250,000) or more will be fully secured. Funding Recipient shall, whenever necessary, or at the request of the City submit, or cause its Contractor(s) to submit, renewals or replacements of either or both payment and performance bonds on the same terms and conditions.

(b) The payment and performance bonds shall be issued by surety companies licensed or authorized to do business in New York that are otherwise satisfactory to the City, and shall name the City and Funding Recipient as co-obligees. The penal sum of each bond shall be in an amount at least equal to the contract price of the Construction Contract covered thereby, and shall increase from time to time as the contract price increases. The surety shall expressly waive notice of additional work and increases to the initial contract price, and the bonds shall cover such additional work and increased contract price.

Section 5.04. Permits and Approvals. Funding Recipient shall obtain all Permits and Approvals required for the construction of the Project Improvements as and when required by all Governmental Authorities having jurisdiction over the Project. For the purposes hereof, “**Permits and Approvals**” means all building, permits, consents, certificates, licenses, authorizations and approvals of Governmental Authorities, including, without limitation, the New York City Building Department and the Public Design Commission, as may be required under applicable Requirements in connection with the Project.

Section 5.05. Substantial Completion. Funding Recipient shall advise the City in writing that, in Funding Recipient’s opinion, the Project has reached Substantial Completion and the City may, in its sole discretion, inspect the Premises within a reasonable time to determine whether the City concurs with Funding Recipient. If the City disagrees with Funding Recipient, the City will provide Funding Recipient with the reasons for the City’s determination, and Funding Recipient shall promptly and diligently undertake any and all necessary actions to address the City’s concerns to the City’s reasonable satisfaction. The City may, in its sole discretion, conduct subsequent inspections of the Premises until the City confirms that the Project has reached Substantial Completion.

For the purposes hereof the following terms shall have the following meanings:

“**Final Punch List**” means a written statement issued by the Architect, or by the Construction Manager and approved by the Architect, and reasonably satisfactory to the City in form and substance, that provides a true and complete description of all items, elements, defects, deficiencies and conditions of the Project Improvements that, to the best knowledge of the Architect and/or the Construction Manager, remain to be completed or require repair, remediation, correction in order to reach Final Completion of the Project in accordance with the Final Plans and Specifications and applicable Requirements, and includes a cost estimate for the performance of all such requisite work.

“**Substantial Completion**” means that: (a) the Architect shall have issued to the City a certificate certifying that the Project has reached Substantial Completion in a form reasonably satisfactory to the City; (b) Funding Recipient shall have delivered to the City the Final Punch List, (c) Funding Recipient shall have provided the City with a true and complete copy of the Temporary Certificate of Occupancy for the Premises as improved by the Project Improvements, if one is required under applicable Requirements, and (d) in the City’s reasonable discretion, the Premises may be used for the purposes authorized by the City Purpose Covenant.

“**Temporary Certificate of Occupancy**” means any temporary certificate of occupancy, or an amendment to an existing temporary certificate of occupancy for the Premises, such that the Premises as improved by the Project Improvements are legal for the use and occupancy authorized by the City Purpose Covenant.

Section 5.06. Final Completion.

(a) Funding Recipient shall cause the Contractors to complete all items described in the Final Punch List, including performing all requisite repairs, remediations, corrections and other Construction Work in order to reach Final Completion of the Project on the date required by the Completion Schedule.

(b) Funding Recipient shall advise the City in writing that, in Funding Recipient’s opinion, the Project has reached Final Completion and the City may, in its sole discretion, inspect the Premises within a reasonable time to determine whether the City concurs with Funding Recipient. If the City disagrees with Funding Recipient, the City shall provide Funding Recipient with the reasons for the City’s determination, and Funding Recipient shall promptly and diligently undertake any and all necessary actions to address the City’s concerns to the City’s reasonable satisfaction. The City, in its sole discretion, may conduct subsequent inspections of the Premises until the City confirms that the Project has reached Final Completion.

(c) For the Purposes hereof the following terms shall have the following meaning:

“**Final Completion**” means that each of the following shall have occurred:

(i) each of the Architect and the Construction Manager, if one is employed, shall have issued to the City a “Certificate of Final Completion,” satisfactory to the

(ii) Funding Recipient shall have provided the City with a true and complete copy of the Permanent Certificate of Occupancy for the Premises as improved by the Project Improvements, if one is required under applicable Requirements.

(iii) If no Certificate of Occupancy is required under applicable Requirements, Funding Recipient shall have provided the City with a true and complete copy of a Letter of Completion issued by the Building Department stating that all requisite inspections have been completed and all necessary sign-offs have been issued.

(iv) Funding Recipient shall have delivered to the City two sets of “as-built” drawings for the Project. The as-built drawings shall indicate any deviations from the Final Plans and Specifications and establish the exact locations of underground or otherwise concealed utilities and appurtenances as referenced to permanent surface improvements.

(v) Funding Recipient shall have submitted to the City a certificate executed by the Architect stating that, if applicable, the requirements of the Green Building Standards Law (New York City Charter Section 224.1 and Chapter 10 of Title 43 of the Rules of the City of New York) have been satisfied.

(vi) If any Lien for any work has attached to the Premises or the Funding, Funding Recipient shall have discharged such Lien and refunded to the City all costs and expenses incurred by the City in discharging such Lien, including all court costs and reasonable attorneys' fees.

(vii) Funding Recipient shall have submitted to the City a Close-Out Report.

“Close-Out Report” means a report, satisfactory to the City in form and substance that includes: (i) a final accounting of all costs and expenses incurred by Funding Recipient in connection with the Project, amounts of the Funding previously disbursed by the City to reimburse Funding Recipient for Eligible Project Costs incurred and paid by Funding Recipient in connection with the Project, and amounts of the Funding that have not been disbursed to Funding Recipient as of the date of the Close-Out Report, (ii) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which Funding Recipient or any other Person may be responsible, either have been paid or otherwise discharged in full, and (iii) other documentation , including, but not limited to, receipts, releases and waivers of Liens that establish to the satisfaction of the City that all obligations of Funding Recipient related to the Project have been paid and/or discharged in full.

“Permanent Certificate of Occupancy” means any permanent certificate of occupancy that may be required by applicable Requirements, or amendment to an existing

certificate of occupancy for the Premises, such that the Premises as improved by the Project Improvements can be legally utilized for the purposes authorized by the City Purpose Covenant.

Section 5.07. Guaranties and Warranties; Obligation to Correct Defects.

(a) Guarantees and Warranties. Funding Recipient shall obtain the guarantees and warranties on labor, materials and equipment that are customary and generally available for each component of the Project.

(b) Obligation to Correct Defects. Funding Recipient agrees to repair, replace, restore and/or remedy any defects that affect the structural integrity of the Premises and any other patent or latent defects in workmanship or materials related to the Project, at its sole cost and expense, for so long as the relevant guarantees and warranties that it is required to obtain for the Project are in effect.

(c) Survival. The obligations of Funding Recipient under this Section shall survive the expiration and/or earlier termination of this Agreement.

Section 5.08. Site Inspections. Upon reasonable prior notice, Funding Recipient shall permit the City and its officers, employees, agents and consultants, at any time and from time to time, during business hours and at any other time during the conduct of any Construction Work, to inspect the Premises and review the progress of the work on the Project to determine compliance with this Agreement. During the course of any such inspections, the City may examine all structural and mechanical systems, plumbing, electrical wiring, fixtures, equipment, elevators, roofs, structural members, utilities and furnishings located in, upon and under the Premises and all Plans and Specifications relative to the Project. Funding Recipient shall cause a complete set of the Final Plans and Specifications, as then in effect, and shop drawings to be maintained at the Premises for inspection by the City. Nothing herein shall be deemed to limit the right of the City in its governmental capacity to inspect the work performed in connection with the Project from time to time as it may be permitted by applicable Requirements.

Section 5.09. No Liability for Review of Plans and Specifications or Inspections. Funding Recipient understands and agrees that:

(a) The City's review of the Plans and Specifications does not impose any duty on the City to advise Funding Recipient or any other Person of any defect identified by the City in connection with such review.

(b) The City's approval of the Plans and Specifications does not constitute a representation or warranty that: (i) such Plans and Specifications are complete or correct, or that (ii) the improvements contemplated by such Plans and Specifications will comply with applicable Requirements, will be structurally or architecturally safe and sound, or will be adequate or appropriate for any intended purpose or use.

(c) The City's inspection of the Premises does not impose any liability on the City for the failure to observe any defect, or impose any duty on the City to advise Funding Recipient of any such defect observed by the City.

ARTICLE 6

VENDEX

Section 6.01. VENDEX Requirements.

(a) Funding Recipient and all First Tier Service Providers whose contract amount (together with any other contracts with the City) equal or exceed One Hundred Thousand Dollars (\$100,000) are subject to VENDEX review as a condition of the receipt of the Funding. Accordingly, Funding Recipient and any such First Tier Service Providers who have not submitted VENDEX Questionnaires to the City within the preceding three (3) year period are required to submit properly completed VENDEX Questionnaires to the Mayor's Office of Contract Services ("MOCS") and an affidavit executed by the Chief Financial Officer of Funding Recipient to the City confirming submission of said VENDEX Questionnaires to MOC. However, if Funding Recipient and/or any First Tier Service Providers have submitted VENDEX Questionnaires to the City within the preceding three year period, at the discretion of the City, Funding Recipient and said First Tier Service Providers may, instead, submit two (2) Certificates of No Change to the City in a form prescribed by the City.

(b) If at any time a VENDEX review discloses any derogatory information about Funding Recipient and/or a First Tier Service Provider, the City may, in its sole discretion, (i) terminate this Agreement; and/or (ii) disqualify Funding Recipient and/or such First Tier Service Provider from receiving any proceeds of the Funding. In addition, upon demand by the City, any Funding previously disbursed to Funding Recipient as reimbursement for payments to such disqualified First Tier Service Provider shall be promptly repaid to City.

(c) For the purposes hereof, the following terms shall have the following meanings:

"VENDEX" means the City's Vendor Information Exchange System (NYC Admin. Code Section 6-116.2) and such other contractor review system(s) as may be utilized by the City during the Term of this Agreement.

"VENDEX Questionnaires" means, collectively, a Vendor Questionnaire, a Principal Questionnaire and such other questionnaires and/or certificates as may be required by VENDEX, each in a form determined by the City.

ARTICLE 7

PROCUREMENT REQUIREMENTS

Section 7.01. Procurement of First Tier Service Providers.

(a) Unless the City authorizes otherwise, for each First Tier Service Contract, Funding Recipient shall make a reasonable effort to obtain bids and/or proposals from five (5) bidders and/or proposers which, in the reasonable discretion of Funding Recipient, have the skills and experience to perform the requisite services. Notwithstanding the preceding, it is understood and agreed that Funding Recipient may seek less than the prescribed five (5) bids or

(b) For each First Tier Service Contract entered into by Funding Recipient, Funding Recipient shall submit to the City a copy of the solicitation document, a written summary and analysis disclosing, among other things, whether any of the bidders and/or proposers is an Affiliate, a statement identifying the bidder and/or proposer Funding Recipient intends to select stating the reasons for Funding Recipient's selection, and such other information as the City may reasonably request.

Section 7.02. Selection of First Tier Service Providers. Funding Recipient shall award each First Tier Service Contract to the bidder or proposer whose bid or proposal, in the reasonable discretion of Funding Recipient, represents the most advantageous combination of price and technical merit, provided that such bidder or proposer shall satisfy the minimum requirements for service providers set forth in Section 7.04 below and shall otherwise be reasonably satisfactory to the City.

Section 7.03. Eligible Project Costs. The Funding may not be utilized to reimburse Funding Recipient for payments made to a First Tier Service Provider and such payments shall not constitute Eligible Project Costs hereunder, unless:

(a) The First Tier Service Provider in question is procured in accordance with the requirements of this Agreement.

(b) The First Tier Service Contract with the First Tier Service Provider in question complies with the applicable Requirements of Exhibit C hereto.

Section 7.04. Minimum Requirements for Service Providers. All service providers for the Project, i.e., the Architect, Construction Manager, General Contractor, all Contractors and subcontractors, at a minimum, shall possess all necessary permits, consents, certificates and licenses and other approvals required by applicable Requirements in order to perform their services hereunder.

ARTICLE 8

THE FUNDING

Section 8.01. Agreement to Fund. Subject to the terms, covenants and conditions of this Agreement and the performance by Funding Recipient of its Obligations hereunder, the City agrees to disburse the Funding to Funding Recipient to reimburse Funding Recipient for Eligible Project Costs incurred and paid by Funding Recipient in connection with the City-Funded Scope in the manner and to the extent provided in this Agreement. It is understood and agreed that the City does not warrant or represent that the Funding will be sufficient to cover the costs of undertaking the Project to completion, and that Funding Recipient will be solely responsible for any costs and expenses in excess of the Funding that may be incurred in undertaking the Project to completion.

Section 8.02. Amount. The amount of Funding that the City agrees to disburse to Funding Recipient pursuant to this Agreement shall be the lesser of:

- (a) _____ (\$_____);
- (b) the aggregate amount actually appropriated by the City for the purposes of the Project during the Term of this Agreement; and
- (c) the aggregate amount of Eligible Project Costs submitted by Funding Recipient for reimbursement to, and approved by, the City hereunder.

Section 8.03. Project Budget. Attached hereto as Exhibit A is a project budget (“**Project Budget**”) which sets forth: (a) Total Project Costs for the Project that fully and accurately reflect the costs and expenses of undertaking the Project to completion in accordance with the Final Plans and Specifications, including a 15% contingency, and (b) Eligible Project Costs for the City-Funded Scope, which Funding Recipient proposes to requisition over the Term of this Agreement. Funding Recipient understands and agrees that the Project Budget may not be amended, and the cost of any item covered by the Project Budget shall not be increased, without the City’s prior written approval, except that:

- (a) Funding Recipient may increase the amount of any item of the Project Budget that is not part of the City-Funded Scope, provided that Funding Recipient shall provide satisfactory evidence to the City that Funding Recipient has sufficient funds and other financial resources (such as enforceable pledges and binding loan commitments from lending institutions) available to cover the increase in question; and
- (b) if Funding Recipient realizes a cost saving for any item of Eligible Project Costs that is part of the City-Funded Scope, and seeks reimbursement from the City in an amount less than the amount authorized by the Project Budget for such item, Funding Recipient may, upon prior notice to the City, apply the cost savings to another item of Eligible Project Costs set forth in the Project Budget.

Notwithstanding the preceding, if any such amendment to the Project Budget also involves a change or revision to Plans and Specifications and Construction Work related thereto and/or a Material Change Order, the provisions of Article 4 hereof shall apply and Funding Recipient shall comply with the applicable provisions of said Article.

Section 8.04. Ineligible Project Costs. Notwithstanding anything to the contrary, it is understood and agreed that the following costs and expenses do not constitute Eligible Project Costs and are ineligible for reimbursement by the City with the Funding: (a) the cost of a General Contractor engaged to manage Construction Work, if Funding Recipient also utilizes a Construction Manager that performs functions similar to, or that overlap, those of the General Contractor, (b) any return on equity invested in the Project by Funding Recipient, (c) any fee to Funding Recipient or any Affiliate except, in the case of Affiliates, fees for services rendered that are required by the Project, provided that the selection by Funding Recipient of its Affiliate to perform such services satisfies that requirements of Articles 6 and Article 7 hereof, and the fees payable to said Affiliate comply with the provisions of Section 9.05(b) hereof, (d) any interest or fee in connection with any loan used to pay any costs of the Project, (e) any overhead

Section 8.05. The City's Rights if Funding Recipient Lacks Sufficient Funds. If at any time the City determines, in its sole reasonable discretion, that the cost of undertaking the Project to completion will likely exceed the funds available to Funding Recipient for such purpose, the City may cease making disbursements of the Funding immediately, and/or terminate this Agreement upon thirty (30) days prior notice to Funding Recipient unless, prior to the expiration of such thirty (30) day period, Funding Recipient provides evidence satisfactory to the City, in its sole reasonable discretion, that Funding Recipient has sufficient funds at hand to undertake the Project to completion. If Funding Recipient provides satisfactory evidence to the City that Funding Recipient has sufficient funds at hand for the purposes of undertaking the Project to completion, the City shall disburse any portion of the Funding otherwise payable to Funding Recipient and withheld by the City pursuant to this Section.

Section 8.06. The City's Right of Setoff. Funding Recipient does hereby authorize and direct the City to, upon prior notice to Funding Recipient, apply all or any portion of the Funding to any amounts payable by Funding Recipient under this Agreement that remain unpaid as and when due, it being understood and agreed that any such application of the Funding by the City shall not relieve Funding Recipient of any of its Obligations hereunder or cure any Default of Funding Recipient on account of any such failure to make a requisite payment as and when due. Amounts of the Funding applied by the City in accordance with this Section shall be deemed a proper disbursement of the Funding in accordance with the terms of this Agreement. For the foregoing purposes, Funding Recipient does hereby grant the City a security interest in, right of set-off against and transfers, pledges and assigns to the City all of Funding Recipient's right, title and interest, if any, to the Funding.

ARTICLE 9

DISBURSEMENT OF THE FUNDING; RETAINAGE

Section 9.01. Disbursements of the Funding.

(a) The Funding will be disbursed to reimburse Funding Recipient for Eligible Project Costs incurred and paid by Funding Recipient in connection with the City-Funded Scope. Each disbursement of the Funding is subject to satisfaction of the conditions precedent set forth in Section 9.02, below, and the prior receipt by the City of a Payment Requisition and supporting documentation required by Section 9.03, below. Funding Recipient understands and agrees that the amount of the Funding disbursed to Funding Recipient is subject to Retainage as set forth in Section 9.04 and certain other limitations set forth in Section 9.5 below.

(b) Funding Recipient shall submit Payment Requisitions no more frequently than one (1) for every thirty (30) day period or any less frequently than one (1) for every sixty (60) day period, unless the City authorizes Funding Recipient otherwise.

(c) For the purposes hereof "**Payment Requisition**" means a properly completed written request to the City requesting a disbursement of the Funding to reimburse

Schedule II. Each
Payment Requisition must be executed by an authorized representative of Funding Recipient.

Section 9.02. Conditions Precedent to All Disbursements. The following shall be conditions precedents to all disbursements of the Funding:

(a) Sufficient Funds. The City shall have determined that, in its sole and absolute discretion, Funding Recipient has sufficient funds and other financial resources (such as enforceable pledges and binding loan commitments from lending institutions) to undertake the Project to completion. In this connection, Funding Recipient shall submit to the City upon request evidence reasonably satisfactory to the City that Funding Recipient has sufficient funds and other financial resources, including, but not limited to, bank statements and copies of such enforceable pledges and binding financial commitments.

(b) No Material Adverse Change. The City shall have determined that, in its sole and absolute discretion, there has not occurred a material adverse change in the condition (financial or otherwise), business, operations or prospects, of Funding Recipient since the Effective Date. In this connection, Funding Recipient shall submit to the City, upon request, audited financial statements of Funding Recipient and other evidence reasonably satisfactory to the City that evidences the condition (financial and otherwise), business, operations and prospects of Funding Recipient.

Section 9.03. Required Supporting Documentation. Funding Recipient must provide the following supporting documentation together with Payment Requisitions submitted to the City:

(a) Evidence of Payment. True and complete copies of paid invoices, cancelled checks and other evidence that all payrolls, bills for materials and equipment and other obligations for which a disbursement of the Funding is requested have been paid in full or otherwise satisfied.

(b) Releases of Liens. Partial releases of Liens from Contractors, subcontractors and suppliers with respect to all Construction Work covered by the payment Requisition.

(c) Payment and Performance Bonds. If not previously submitted, the payment and performance bonds described in Section 5.03 hereof for each Contractor covered by the Payment Requisition.

(d) Permits and Approvals. At the request of the City, if not previously submitted, true and complete copies of all Permits and Approvals required for the services covered by the Payment Requisition.

(e) Construction Contracts. At the request of the City, if not previously submitted, copies of all Construction Contracts for the services covered by the Payment Requisition.

(f) VENDEX Questionnaires. If not previously submitted, properly completed VENDEX Questionnaires for each First Tier Service Provider covered by the Payment Requisition.

(g) Payments to Affiliates. A statement identifying payments made to Affiliates covered by the Payment Requisition, if any.

(h) Sources of Funds. At the request of the City, a statement identifying the amount and sources of other funds used for the Project.

(i) Additional Documentation. Such additional documents and information as may be reasonably requested by the City in support of the Payment Requisition, including without limitation documents as would customarily be required by construction lenders engaged in projects similar in scope to the Project.

Section 9.04. Retainage.

(a) Withholding Retainage. At all times until Substantial Completion of the entire Project, the Parties agree to withhold the amounts stated below against Construction Hard Costs paid or payable by Funding Recipient in connection with the Project (“**Retainage**”). Accordingly, the Parties agree as follows:

(i) With respect to Hard Costs that are not part of the City-Funded Scope, Funding Recipient shall withhold Retainage in such amounts as shall be customary and reflect industry practices and standards for projects similar in all material respects to the Project.

(ii) With respect to Hard Costs that are part of the City-Funded Scope, Funding Recipient shall withhold Retainage in an amount not less than five percent (5%) of such Hard Costs until Substantial Completion of the entire Project (not only the City-Funded Scope).

(b) Disbursement of Retainage. Disbursements of the Funding to cover Retainage shall be as follows:

(i) Funding Recipient may disburse Retainage that it holds against Hard Costs that are not part of the City-Funded Scope at such time as shall be customary and reflect industry practices and standards for projects similar in all material respects to the Project.

(ii) Funding Recipient shall not disburse any Retainage that it holds against Hard Costs that are part of the City-Funded Scope until Substantial Completion of the entire Project. Notwithstanding the preceding, Funding Recipient may disburse Retainage that it holds against such Hard Costs incurred for services performed by trade Contractors that have substantially completed their services prior to Substantial Completion of the entire Project, but only if: (x) Funding Recipient has received all Permits and Approvals necessary under applicable Requirements for the services performed by such trade Contractors; (y) the trade Contractors in question have delivered all warranties and guaranties covering their services to Funding Recipient; and (z) the disbursal of Retainage to such trade Contractors under such circumstances is customary and reflects industry practices and standards for projects similar in all material respects to the Project.

(iii) Prior to Substantial Completion of the entire Project Funding Recipient shall not seek disbursement of Funding to reimburse Funding Recipient for any Retainage disbursed to any Contractors. Upon Substantial Completion of the Project, and as soon as practicable after receipt by the City of a Payment Requisition and all supporting documentations and reports required by this Agreement in connection with said disbursement, the City shall reimburse Funding Recipient for Retainage disbursed to any Contractors minus an amount equal to twice the cost of performing the work required by the Final Punch List (“**Final Punch List Retainage**”).

(iv) the City shall disburse the Final Punch List Retainage to Funding Recipient upon Final Completion of the Project and receipt by the City of a Payment Requisition and all supporting documentation and reports required by this Agreement in connection with said disbursement.

Section 9.05. Limitations on Disbursement.

(a) Cash Flow Projection. the City may, in its sole and absolute discretion, limit the amount of Funding disbursed to Funding Recipient for any items Eligible Project Costs incurred and paid in connection with the City-Funded Scope in any month during the Term of this Agreement to correspond to the amount that Funding Recipient projected that it would requisition from the City for such items during such month in the Cash Flow Projection submitted to and approved by the City in accordance with Article 2 of this Agreement.

(b) Payments to Affiliates. Notwithstanding any provision to the contrary contained in this Agreement, costs and expenses incurred and paid by Funding Recipient to any Affiliate in connection with the Project will be reimbursed by the City only to the extent that such costs and expenses do not exceed an amount (to be determined by the City, acting reasonably) which would have been paid by Funding Recipient to an unrelated party in an arms length transaction.

(c) Errors and Defects; Non-Conforming Work. The City may, in its sole and absolute discretion, deny reimbursement to Funding Recipient for costs and expenses incurred in connection with a Change Order issued to correct errors or omissions on the part of Funding Recipient, the Architect or any Contractor or to cover the cost of correcting non-conforming work. In addition, the disbursement of any portion of the Funding shall not constitute a waiver by the City of any of its rights hereunder with respect to any defective work by Funding Recipient, the Architect or any Contractor or any unauthorized deviation from the Final Plans and Specifications.

(d) Materials Not Incorporated into the Premises. No portion of the Funding shall be disbursed for materials not incorporated into the Premises except materials (i) as to which Funding Recipient has acquired title; (ii) which are properly stored on the Premises; and (iii) which are secured and insured against theft and damage to the reasonable satisfaction of the City. In the event of any insured loss of such materials, Funding Recipient covenants to use the insurance proceeds exclusively as a trust fund to replace the insured materials. If an Event of Default shall have occurred at the time of the settlement of any insurance claim in respect of such materials, then the insurance proceeds shall be paid to the City.

Section 9.06. Sales Tax Savings. To the fullest extent permitted by law, Funding Recipient, its Contractors and their subcontractors shall use any applicable exemption from New York State and City sales and compensating use taxes in connection with the Project. The City shall determine, in its sole and absolute discretion, whether or not to reimburse Funding Recipient for any such taxes paid, for which an exemption could have been claimed, and the City's determination in this regard shall be final and conclusive.

Section 9.07. Payment Requisitions Renew Funding Recipient's Representations. Funding Recipient agrees that each Payment Requisition submitted to the City shall constitute a representation and warranty that: (a) all of the representations and warranties of Funding Recipient made in this Agreement remain true, complete and correct in all material respects on the date of such Payment Requisition; (b) no Default in any of the terms, covenants or conditions on the part of Funding Recipient to be performed or observed under this Agreement has occurred and is continuing; (c) no material default in any of the terms, covenants or conditions under any of the other Transactional Documents has occurred and is continuing; (d) the Premises have not been materially damaged by fire or other casualty or subjected to condemnation; (e) no public improvement Lien is or record against the Funding which has not been bonded or otherwise discharged of record; and (f) all work completed during the period covered by the Payment Requisition has been paid for in full, except (i) Retainage withheld by Funding Recipient pursuant to Construction Contract, and (ii) amounts contested in good faith (provided Funding Recipient shall advise the City promptly in writing of the nature and amount of all such contests).

Section 9.08. Payment of Payment Requisitions. The City shall endeavor to disburse the Funding requested by Funding Recipient pursuant to a Payment Requisition within thirty (30) days from the City's receipt thereof or such other period as the City shall determine, in its sole reasonable discretion, would allow the City sufficient time to undertake its review of the Payment Requisition in question and all supporting and other documentation required to be submitted to the City pursuant to this Agreement in connection with said Payment Requisition.

Section 9.09. Delivery of Payment Requisitions. All Payment Requisitions and supporting documentation for this Project shall be delivered to the designated DDC Project Manager, or to such other person as the City may designate from time to time.

Section 9.10. Electronic Funds Transfers.

(a) In accordance with Section 6-107.1 of the New York City Administrative Code, the Funding Recipient agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Funding Recipient shall designate one financial institution or other authorized payment agent and shall complete the "**EFT Vendor Payment Enrollment Form**" (available at <http://www.nyc.gov/dof>) in order to provide the Commissioner of Finance with information necessary for the Funding Recipient to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the

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

ARTICLE 10

CERTAIN REPRESENTATIONS AND WARRANTIES OF FUNDING RECIPIENT

Funding Recipient hereby represents and warrants to the City as follows:

Section 10.01. Incorporation, Good Standing and Due Qualification. Funding Recipient is a not-for-profit corporation duly incorporated, validly existing and in good standing under the laws of the State and has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required.

Section 10.02. Corporate Power and Authority; No Conflicts. The execution, delivery and performance by Funding Recipient of this Agreement and the Declaration have been duly authorized by all necessary corporate action of Funding Recipient and do not and will not (a) require any consent or approval by any Person, (b) contravene the charter or by-laws of Funding Recipient, (c) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to Funding Recipient, (d) result in a breach of, or constitute a default or require any consent under, any indenture or agreement, lease or instrument to which Funding Recipient is a party or its properties may be bound or affected, including, without limitation, any of the Transactional Documents, (e) cause Funding Recipient to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or in default under any such indenture, agreement, lease or instrument, including, without limitation, any of the Transactional Documents, or (f) result in or require the creation or imposition of a Lien, upon or with respect to any of the properties or interests now owned or hereafter acquired by Funding Recipient.

Section 10.03. Declaration. The Declaration constitutes (or shall constitute upon recordation) a first priority interest on the Premises prior and superior to each and every other Lien on the Premises.

Section 10.04. Sufficient Funds. Funding Recipient has sufficient funds or other financial resources (such as enforceable pledges or binding commitments) in excess of the amount of the Funding to cover all costs and expense of undertaking the Project to completion.

Section 10.05. Legally Enforceable Agreement. Each of this Agreement and the Declaration constitute a legal, valid and binding obligation of Funding Recipient enforceable against Funding Recipient and the Premises in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

Section 10.06. Funding is Not Compensation. Funding Recipient understands and agrees that the Funding is not a fee or other compensation earned by or paid to Funding Recipient for its performance of the Project.

Section 10.07. No Defaults.

(a) No Default has occurred and is continuing under this Agreement, and no Event of Default, or other event which with the giving of notice, or the passage of time, or both, would constitute an Event of Default has occurred under this Agreement.

(b) Funding Recipient is not in default under any of the Transactional Documents, or other agreement with the City.

(c) Funding Recipient is not in default of any obligation of any kind to the City or any other Governmental Authority.

Section 10.08. No Litigation. There are no suits or proceedings pending or, to the best of Funding Recipient's knowledge, threatened against Funding Recipient which might materially affect the implementation of the Project, the consummation of the transactions contemplated by this Agreement, or the full performance of the Obligations of Funding Recipient under this Agreement and/or the Declaration.

Section 10.09. Taxes. Funding Recipient has filed all tax (federal, state and local) returns required to be filed and has paid all taxes, assessments and governmental charges and levies thereon to be due, including interest and penalties. Funding Recipient has no knowledge of any claims for taxes due and unpaid which might become a Lien upon any of its assets.

Section 10.10. Operation of Business; Compliance with Laws. Funding Recipient possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, to conduct its business substantially as now conducted and as presently proposed to be conducted and to operate the Premises in accordance with the City Purpose Covenant, and Funding Recipient is not in violation of any valid rights of others with respect to any of the foregoing. Funding Recipient is in compliance in all respects with all applicable Requirements.

Section 10.11. Labor Disputes and Acts of God. Neither the business nor the properties of Funding Recipient are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy

Section 10.12. Integrity and Responsibility. Neither Funding Recipient, nor any Principal of Funding Recipient:

(a) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City;

(b) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(c) has been convicted of a felony in the past ten (10) years;

(d) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(e) has received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

Section 10.13. Contracts. Each and every contract with service providers for the Project covered by the requirements of Exhibit C hereof complies with the applicable requirements of said Exhibit C.

Section 10.14. Description of the Project. Schedule I sets forth an accurate and true description of the entire Project. It includes both the City-Funded Scope and all other elements of the Project for which Funding Recipient does not intent to request City support.

Section 10.15. Documents Submitted in Connection with the Funding. All information submitted to the City in connection with the Funding is complete and correct in all material respects and fairly presents the condition, operations and prospects of Funding Recipient as of the date hereof. Funding Recipient has not misstated, omitted or withheld any material fact in connection with its application for the Funding upon which the City may have relied in its decision to contribute the Funding to Funding Recipient. Each invoice, bill of sale, receipt, check or other document or instrument, submitted to the City by Funding Recipient in connection with the Funding, is genuine, complete and correct, and accurately reflect the transaction to which it relates.

ARTICLE 11

REPORTING REQUIREMENTS

Section 11.01. Compliance Report. It is a requirement of this Agreement that Funding Recipient submit to the City a Compliance Report as of the end of each Quarterly

(a) For each First Tier Service Provider required to submit a VENDEX Questionnaire or Certificate of No Change: (i) if not previously submitted, properly completed VENDEX Questionnaires as required by Article 6 hereof and, if previously submitted, the date that Funding Recipient submitted the requisite VENDEX Questionnaires to MOCS, the date said VENDEX Questionnaires were certified and their respective expiration dates and/or (ii) if not previously submitted, properly completed Certificates of No Change, and if previously submitted, the date that Funding Recipient submitted the requisite Certificates of No Change to the City.

(b) If not previously submitted, certificates of insurance evidencing the coverages required to be maintained by Funding Recipient under this Agreement and, if previously submitted, the dates submitted and the respective expiration dates for each policy reflected by said certificates of insurance.

(c) If not previously submitted, the employment reports required by E.O. 50 and described in Exhibit D hereof and, if previously submitted, the dates that Funding Recipient submitted said employment reports to the City.

(d) If not previously submitted, documentation reasonably satisfactory to the City evidencing Funding Recipient's compliance with the procurement requirements of Article 7 hereof and, if previously submitted, the date that Funding Recipient submitted said documentation to the City.

Section 11.02. Quarterly Progress Report. Funding Recipient shall submit to the City a Quarterly Progress Report as of the end of each Quarterly Reporting Period. For the purposes hereof **“Quarterly Progress Report”** means a report that provides the following information about the Project:

(a) Aggregate amounts spent on Total Project Costs (not including costs and expenses reimbursed or intended to be reimbursed to Funding Recipient by the City hereunder) for the Project.

(b) If Funding Recipient has modified the Project Budget, an updated Project Budget, it being understood and agreed that, to the extent required by Section 8.03 hereof, any modifications to the Project Budget requires the City's prior written approval.

(c) If Funding Recipient has revised the Completion Schedule, a revised Completion Schedule, it being understood and agreed that Funding Recipient shall not revise the Completion Schedule without first obtaining the City's written consent.

(d) If Funding Recipient has modified the Cash Flow Projection, a revised Cash Flow Projection, it being understood and agreed that Funding Recipient will not substantially revise the Cash Flow Projection without first obtaining the City's prior written approval.

(e) A narrative description of accomplishments and milestones reached by the Project during the period covered by the Quarterly Progress Report.

(f) A description of any Change Orders and Material Change Orders issued during the period covered by the Quarterly Progress Report.

(g) A report of the status of all requisite Permits and Approvals for the Project.

(h) Such other information regarding the Project as the City may reasonably require.

Section 11.03. Close-Out Report. Funding Recipient shall submit to the City a Close-Out Report as a condition to reaching Final Completion of the Project as more fully described in Section 5.06(b) hereof.

ARTICLE 12

CERTAIN ADDITIONAL COVENANTS

Section 12.01. Compliance with Requirements; Requirements Contest.

(a) Funding Recipient shall comply with all Requirements applicable to the Project, the construction of the Project Improvements, the development, maintenance, use and operation of the Premises in accordance with the City Purpose Covenant and Funding Recipient's performance of its Obligations hereunder.

(b) Notwithstanding the preceding, Funding Recipient shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Funding Recipient, except, if by reason of noncompliance therewith, in the City's sole reasonable discretion, the Project Improvements, or any part thereof, could be in danger of being forfeited or if the City would be in danger of being subjected to criminal liability or penalty, or civil liability, or if failure to comply is hazardous to Persons or property or would violate any insurance policy provisions.

Section 12.02. Insurance Requirements. Funding Recipient shall maintain or caused to be maintained the insurance coverages and policies described in Exhibit B hereof at no cost or expense to the City. Funding Recipient shall comply with the requirements of said Exhibit B and with all terms, covenant and conditions of such insurance coverages and policies and shall promptly furnish the City with copies of any notice of default with respect to such coverages and policies.

Section 12.03. Maintenance of Existence. Funding Recipient shall preserve and maintain its corporate existence as not-for-profit corporation and shall remain in good standing under the laws of the State and qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is required.

Section 12.04. Prevailing Wages. Funding Recipient shall comply with the requirements of Labor Law Section 220, including, without limitation, Labor Law 220.3 regarding the payment of prevailing wage rates and supplemental benefits to laborers, workers and mechanics in accordance with the scheduled rates, as in effect from time to time.

Section 12.05. Equal Opportunity. Funding Recipient shall comply with the requirements of (1) Labor Law Section 220-e; and (2) E.O. 50, as long as E.O. 50 or any successor thereto, is in force and effect, in whole or in part, and the regulations promulgated thereunder applicable to construction contractors and non-construction contractors, certain of which are attached hereto as Exhibit D.

Section 12.06. Green Building Standards Law. It is understood and agreed that if 50% or more of the estimated Project cost (as defined in the Green Building Standards Law, New York City Charter Section 224.1 and Chapter 10 of Title 43 of the Rules of the City of New York) is paid out of the City Treasury, or if the Project receives ten million dollars or more of the estimated Project cost from the City Treasury, the Project may be subject to and would have to comply with all applicable provisions of the Green Building Standards Law. Additionally, if at any time the aggregate City capital contribution to the Project (i.e., the funding from the City Treasury) equals or exceeds one of the amounts set forth above, the entire Project scope will become subject to all applicable provisions of the Green Building Standards Law.

ARTICLE 13

INDEMNIFICATION

Section 13.01. Obligation to Preserve the City against Liability. Funding Recipient understands and agrees that the City does not have (and shall not have at any time) any responsibility whatsoever for any of the following activities: (i) any design, development or construction undertaken in connection with the Project, or (ii) the operations of the Funding Recipient at the Premises, thereabove and thereabout. At all times, Funding Recipient shall assume sole responsibility for each and every one of the foregoing activities so as to avoid injury to any Person and/or property damage. Funding Recipient shall not perform any act, or do anything, or permit that any act be performed or thing done at the Premises, or any portion thereof, or in connection with any of the activities listed above at any time that subjects or may subject the City to any liability for injury to any Person or damage to property for any reason whatsoever, including, without limitation, by reason of any violation of any Requirement.

Section 13.02. Obligation to Indemnify. To the fullest extent permitted under applicable law, Funding Recipient shall defend, indemnify and save the City and its officials, employees, agents and servants (collectively, the “**Indemnitees**”) harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys’ fees and court costs and disbursements (collectively, “**Covered Claims**”), that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of, or in connection with, this Agreement and/or the Declaration, except to the extent that such liabilities, fines, damages, penalties, claims, costs, charges or expenses are caused by the negligence or intentional misconduct of any such Indemnitee.

Section 13.03. Contractual Liability. The obligations of Funding Recipient under this Article shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part to be performed under any insurance policies.

Section 13.04. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees, then upon demand of the City, Funding Recipient shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Funding Recipient's insurance carrier (if such claim, action or proceeding is covered by insurance), or by such other attorneys as the City shall reasonably approve. The foregoing notwithstanding, any such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, at such Indemnitee's sole cost and expense.

Section 13.05. Payment of Claims. If Funding Recipient receives notice that a Covered Claim has been incurred by, asserted against, or imposed on an Indemnitee, Funding Recipient agrees to pay such Indemnitee all amounts due under this Article within thirty (30) Business Days after receipt of such notice, and any non-payment thereof by Funding Recipient shall constitute a Default for which the City may declare an Event of Default.

Section 13.06. No Other Beneficiaries. Nothing in this Article shall be construed to extend to any Person other than the Indemnitees the benefits of Funding Recipient's Obligation to indemnify the Indemnitees.

Section 13.07. Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 14

LIMITATION OF LIABILITY AND RELEASE

Section 14.01. No Personal Liability. No official, member, director, officer, employee, agent or servant of either the City shall be liable (personally or otherwise) to Funding Recipient or any other Person under or by reason of this Agreement or any of the matters contemplated by this Agreement.

Section 14.02. Release. Funding Recipient understands and agrees that, except for the City's failure to disburse any portion of the Funding to Funding Recipient to the extent required by this Agreement, to the fullest extent permissible under applicable law, the acceptance of each disbursement of the Funding by Funding Recipient shall release the City, its officials, officers and employees from all claims that Funding Recipient and/or any Person acting by or on behalf of Funding Recipient may have against any of the foregoing arising out of or in connection with this Funding Agreement and/or the Declaration prior to the date of acceptance of the disbursement of the Funding.

Section 14.03. Limitation of Liability. Funding Recipient further understands and agrees that in the event that there shall be a final determination by a court of competent jurisdiction that the City has failed to make a required disbursement of the Funding, the only

Section 14.04. Survival. The provision of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 15

DISCHARGE OF LIENS

Section 15.01. No Liens Are Permitted. Funding Recipient shall not, and shall not permit any Person to, create, cause to be created, suffer or permit to remain, any Lien upon (a) the Premises and/or the Project Improvements, (b) any assets of, or funds appropriated to, the City, or (c) any other matter or thing whereby the estate, rights or interest of City in and to the Premises, the Project Improvements, the assets or funds appropriated to the City and/or the Project might be impaired.

Section 15.02. Discharge of Liens. Without limiting the generality of the foregoing, if any mechanic's, laborer's, vendor's, material provider's or similar statutory Lien is filed against the Premises and/or the Project Improvements, or any part thereof, or this Agreement, or if any public improvement Lien created, or caused or suffered to be created by Funding Recipient shall be filed against any assets of, or funds appropriated to, the City, Funding Recipient shall, within thirty (30) days after receiving notice of the filing of such mechanic's, laborer's, vendor's, material provider's or similar statutory Lien or public improvement Lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

Section 15.03. Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 16

CONFLICTS OF INTEREST

Section 16.01. No Prohibited Interests. Funding Recipient hereby agrees that no official, officer, director, employee or agent of the City, who at any time during his tenure has any responsibility with respect to this Agreement, shall have any personal interest or enjoy any personal benefit, direct or indirect, in this Agreement and/or any contract or subcontract for work to be performed in connection with this Agreement or the Project. Upon having any knowledge of any interest prohibited by this Section, Funding Recipient shall immediately advise the City in writing and use its best efforts to terminate the prohibited interest in question. Funding Recipient shall require its contractors and subcontractors to represent and warrant in writing that they have no knowledge of any interest prohibited by this Section, and to covenant to cause any City official, officer, director, employee or agent with an interest prohibited by this Section to

Section 16.02. No Illegal Payments. Funding Recipient hereby represents and warrants that it has not been asked to pay, and has neither offered to pay, nor paid, any consideration, whether monetary or otherwise, in connection with the procurement of the Funding or the execution and delivery by the City of this Agreement.

ARTICLE 17

BOOKS AND RECORDS, INSPECTIONS AND AUDIT

Section 17.01. Maintenance of Books and Records. Funding Recipient shall keep separate, complete and accurate records and books of account regarding the Funding including amounts received and spent on Eligible Project Costs, and other amounts spent in connection with the Project as well as other matters contemplated by this Agreement. Such books of account shall be prepared in accordance with generally accepted accounting principles consistently applied, and such records shall include, but not be limited to, bank statements, bills, invoices and receipts, and other documents and instruments that record all information, circumstances and expenditures related to Funding Recipient's rights, if any, and Obligations under this Agreement, including, without limitation, information relating to the Project. Funding Recipient shall maintain such records, books of account and documents at Funding Recipient's principal place of business in New York City for six (6) years after the Expiration date.

Section 17.02. Inspections and Audits. At any time and from time to time, upon reasonable prior notice, Funding Recipient shall permit the City, its officers, employees, servants, consultants and agents including, without limitation, the Comptroller to: (a) examine and make copies and abstracts from the records, books of account and documents required to be maintained in connection with this Agreement, and (b) visit the properties of Funding Recipient and to discuss the affairs, finances, and accounts of Funding Recipient with any of its officers and directors and independent accountants.

Section 17.03. Survival. The provision of this Article shall survive the expiration of the Term or earlier termination of this Agreement.

ARTICLE 18

INDEPENDENT CONTRACTOR; NO THIRD PARTY BENEFICIARIES

Section 18.01. Independent Contractor. Funding Recipient shall perform its Obligations hereunder in the capacity of an independent contractor and not as an officer, employee, servant or agent of the City. Funding Recipient understands and agrees that it is not an employee of the City, and that neither Funding Recipient, nor any of its officers, employees, servants or agents will hold themselves out as, nor claim to be, officers or employees of the City, or of any department, agency, or unit of the City, and no such Person shall make any claim, demand, or application to or for, any right or privilege applicable to a member, director, officer, or employee, of the City, including, but not limited to, workers' compensation coverage,

Section.

Section 18.02. No Partnership or Joint Venture. Nothing herein contained shall be construed in any manner to create any partnership or joint venture between the City and Funding Recipient and the City and Funding Recipient will not be considered partners or co-venturers for any purpose.

Section 18.03. No Liability. Funding Recipient shall assume sole responsibility for the work and personal conduct of all Persons employed or engaged by Funding Recipient and other Persons in connection with the Project and the performance of its Obligations under this Agreement as well as for their direction and compensation. Nothing in this Agreement shall impose any liability or duty upon the City to any Person employed or engaged by Funding Recipient as coordinator, consultant, or contractor or in any other capacity, or as employee, servant or agent of Funding Recipient, or shall make the City liable to any Person for the acts, omissions, liabilities, obligations, taxes and benefits of whatever nature, including but not limited to unemployment insurance and old age taxes, incurred or payable by Funding Recipient, or any of its coordinators, consultants, contractors, employees, servants or agents.

Section 18.04. No Third Party Beneficiaries. No Person claiming by, through or under Funding Recipient shall be deemed to be a third party beneficiary of this Agreement or entitled to enforce any provision of this Agreement.

Section 18.05. Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 19

INVESTIGATIONS

Funding Recipient shall comply with the investigations, audit, inquiry and cooperation requirements set forth in Exhibit E hereto.

ARTICLE 20

ASSIGNMENT; SUCCESSORS AND ASSIGNS

Section 20.01. No Assignments by Funding Recipient. Funding Recipient shall not convey, pledge, transfer or assign this Agreement or any of the rights (if any) or Obligations of Funding Recipient hereunder, in whole or in part, without the City's prior written consent.

Section 20.02. Assignments by the City. Funding Recipient agrees that the City may assign this Agreement and/or the City's rights under this Agreement in whole or in part without any further consent on the part of Funding Recipient to any Person designated by the City.

Section 20.03. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, the City and Funding Recipient and, to the extent authorized herein, their respective successors and assigns.

ARTICLE 21

EVENTS OF DEFAULT AND CERTAIN REMEDIES

Section 21.01. Events of Default. Each of the following shall constitute an event of default (“**Event of Default**”):

(a) Funding Recipient or any other Person shall use or apply all or any portion of the Funding in violation of the terms, covenants and conditions of this Agreement that relate to the permitted uses of the Funding.

(b) Funding Recipient shall fail to comply with the City Purpose Covenant.

(c) Funding Recipient shall fail to perform or observe any of the terms, covenants or conditions on its part to be performed or observed pursuant to this Agreement (except for a Default described in Section 21.01(a)) and such failure continues for twenty (20) Business Days after written notice to Funding Recipient specifying such Default (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such twenty (20) Business Day period, in which case no Event of Default shall be deemed to exist as long as Funding Recipient shall commence the requisite performance or observance within such twenty (20) Business Day period and shall diligently and continuously prosecute the same to completion within a reasonable period).

(d) Funding Recipient shall fail to perform or observe any of the terms, covenants or conditions on its part to be performed or observed pursuant to the Declaration (except the City Purpose Covenant) and such failure continues for ten (10) Business Days after written notice to Funding Recipient by the City specifying such Default.

(e) Funding Recipient shall fail to perform or observe any term, covenant or condition under any of the Transactional Documents when required to be performed or observed, or an event described in any such Transactional Documents (except the Declaration) shall occur, if the effect of such failure, or the occurrence of such event, after the giving of notice or passage of time, or both, if required under the terms of any such Transactional Document, constitutes a default under any such Transactional Document.

(f) Funding Recipient ceases to perform at any time the Construction Work for any period of time in excess of twenty (20) consecutive calendar days unless: (i) such cessation shall have been caused by an Unavoidable Delay, and the Construction Work shall have resumed promptly after the end of the Unavoidable Delay; and (ii) Funding Recipient shall have made adequate provision reasonably acceptable to the City for the protection of the Premises and materials stored on site against deterioration, loss, damage or theft.

(g) Any representation or warranty made or deemed made by Funding Recipient, in this Agreement and/or the Declaration, or that is contained in any certificate, document, opinion, financial or other statement furnished by Funding Recipient or other Person for or on behalf of Funding Recipient shall be false, incomplete or misleading in any material respect when made or deemed made.

(h) To the extent permitted by law, if Funding Recipient shall (i) admit, in writing, that it is unable to pay its debts as such become due (ii) make an assignment for the benefit of creditors and/or (iii) file a voluntary petition under the present or any future Federal Bankruptcy Act or any other present or future Federal, state or other bankruptcy or insolvency statute or law, or if such petition shall be filed against Funding Recipient and an order for relief shall be entered, (iv) file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Act or any other present or future federal, state or other bankruptcy or insolvency statute or law, (v) shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Funding Recipient, or of all or any substantial part of its properties, the Premises, or of the Project Improvements or any interest of Funding Recipient therein, and/or (vi) take any partnership or corporate action in furtherance of any actions described in this Section.

(i) To the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Funding Recipient seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Code or any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Funding Recipient, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Funding Recipient, or of all or any substantial part of its properties, the Premises, or of the Project Improvements or any interest of Funding Recipient therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated.

(j) One or more judgments, decrees or orders for the payment of money that are final beyond any right of appeal, and individually or in the aggregate shall result in a material adverse change in the financial condition of Funding Recipient shall be filed or entered against Funding Recipient, and any such judgments, decrees or orders shall continue unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied or stayed or bonded pending appeal.

(k) A levy under execution or attachment shall be made against the Premises or the Project Improvements or any part thereof, the income therefrom, this Agreement or the Funding and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) calendar days.

(l) The City shall reasonably determine that there has been a material adverse change in the condition (financial or otherwise), business, operations or prospects of Funding Recipient.

Section 21.02. Certain Remedies. Upon the occurrence of an Event of Default the City may exercise any right, power or remedy permitted to it by law, in equity, or under this Agreement, the Declaration and/or any of the other Transactional Documents, including, without limitation:

(a) Terminating this Agreement (reserving, however, all remedies provided in this Article, the Declaration or available to the City at law and/or equity) in which event the City shall not be required to make further disbursements of the Funding.

(b) Demanding repayment of all or any portion of the Funding, whereupon the amount demanded together with interest thereon from the date of the City's disbursement thereof calculated at the Late Charge Rate shall become immediately due and payable without any further notice or demand.

(c) Enforcing Funding Recipient's Obligations under this Agreement and the Declaration administratively or by equitable remedies of specific performance, declaratory judgment or injunction.

Section 21.03. No Waivers; Remedies Not Exclusive; Etc. No course of dealing on the part of the City or any failure or delay on the part of the City to exercise any right shall operate as a waiver of such right or otherwise prejudice the City's powers and remedies. No right, power or remedy conferred upon or reserved to the City is intended to be exclusive of any other right, power or remedy. Every right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy contained in this Agreement or existing at any time at law or in equity, or otherwise, and may be exercised from time to time and as often and in such order as the City may deem appropriate. The exercise of any right, power or remedy shall not be construed as an election or a waiver of any other right, power or remedy.

Section 21.04. Survival. The remedies available to the City under Section 21.02 hereof shall survive the expiration or earlier termination of this Agreement with respect to the Events of Default described in Sections 21.01(b) and Section 21.01(d), but only until the expiration of the Performance Term (as defined in the Declaration). In addition, the remedies available to the City under Section 21.02 hereof shall survive the expiration or earlier termination of this Agreement with respect to any Event of Default related to any term, covenant or condition of this Agreement which survives the expiration or earlier termination of this Agreement, but only until said term, covenant or condition expires by its terms.

ARTICLE 22

CLAIMS, CONSENT TO JURISDICTION AND VENUE

Section 22.01. Limitation. No action shall be brought against the City by Funding Recipient upon any claims based upon this Agreement unless such action shall be commenced

Section 22.02. Waiver of Trial by Jury. The City and Funding Recipient hereby waive, for the benefit of the City, trial by jury in any action, proceeding or counterclaim brought by any of the foregoing against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the Project, the relationship of the City and Funding Recipient, Funding Recipient's use or occupancy of the Premises, and/or any claim for injury or damages.

Section 22.03. Jurisdiction. Any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("**Federal Courts**") or in the courts of the State of New York ("**New York State Courts**") located in the City and County of New York. To this effect, Funding Recipient agrees as follows:

(a) With respect to any action between the City and Funding Recipient in a New York State Court located in New York County, Funding Recipient hereby waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(b) With respect to any action between the City and Funding Recipient in Federal Court located in New York City, Funding Recipient hereby waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside New York City.

(c) If Funding Recipient commences any action against the City in a court located other than in the City, County and State of New York, upon request of the City, Funding Recipient shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, Funding Recipient shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

(d) Nothing herein shall limit the right of the City to bring any action or proceeding against Funding Recipient or its property in the courts of any other jurisdictions.

(e) A final judgment in any action or proceeding hereunder shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 22.04. Counterclaims. In the event that the City commences any action or proceeding against Funding Recipient on account of the occurrence of a Default or an Event of Default under the terms of this Agreement, Funding Recipient shall not interpose any counterclaim of any nature whatsoever in any such action or proceeding unless such counterclaim is of a compulsory nature such that, as a matter of law, it would be barred if not raised therein.

Section 22.05. Service of Process. Funding Recipient irrevocably consent to the service of any and all process in any judicial action or proceeding either in person, wherever Funding Recipient may be found, or by registered mail addressed to Funding Recipient to its address, and in the manner, set forth in Article 23 hereof. Nothing in this Section shall affect the right of the City to serve legal process in any other manner permitted by law.

Section 22.06. Immunities. To the extent that Funding Recipient has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Funding Recipient hereby waives such immunity in respect of its obligations under this Agreement and the other Transactional Documents and the matters contemplated herein and therein.

ARTICLE 23

NOTICES

Section 23.01. General Requirements. All notices and communication to the Parties hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or sent by registered or certified mail, return receipt requested, or by Airborne Express, Federal Express, Express Mail or other overnight mail service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be deemed to have occurred upon receipt, if hand delivered; five days from the date of mailing, if mailed; or the next business day after transmittal by Airborne Express, Express Mail or other overnight delivery service that provides a receipt to the sender.

(a) All notices and correspondence to the City will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which the City may notify the Funding Recipient from time to time:

Title: Commissioner
Address: New York City Department of Design and Construction
30-30 Thomson Street
Long Island City, New York 11101

with copies to:

Title: General Counsel
Address: New York City Department of Design and Construction
30-30 Thomson Street
Long Island City, New York 11101

(b) All notices and correspondence to Funding Recipient will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which Funding Recipient may notify the City from time to time:

Title:
Address:

Title:
Address:

with a copy to:

Name:
Title:
Address:

ARTICLE 24

MISCELLANEOUS

Section 24.01. Headings, Captions and Table of Contents. The descriptive headings and captions used in this Agreement are for the purposes of convenience only and do not constitute a part of this Agreement. The Table of Contents hereof is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

Section 24.02. Governing Law. This Agreement and its performance shall be governed by and construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflict of laws and any rule requiring construction against the party drafting this Agreement.

Section 24.03. Amendments; Waiver. This Agreement may not be amended except by an instrument in writing signed by both parties. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either Party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other Party. The waiver by either Party of any failure on the part of the other Party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar thereto.

Section 24.04. Entire Agreement. This Agreement and the Declaration contain all of the promises, agreements, conditions, inducements and understandings between the City and Funding Recipient concerning the Funding and the other matters contemplated by this Agreement and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the Funding or the other matters contemplated by this Agreement other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith or hereafter by the Parties hereto. Nothing herein shall be deemed to limit the obligations of Funding Recipient under any of the Transactional Documents to which it may be a party.

Section 24.05. Construction of Terms and Words. All terms and words used in this Agreement regardless of the number and gender in which they are used shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context or sense may require, with the same effect as if such numbers and words had been fully and properly written in the required number and gender.

Section 24.06. Invalidity of Certain Provisions. The provisions of this Agreement are intended to be severable. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 24.07. Consents and Approvals.

(a) Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals that may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not, except where expressly stated otherwise, be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act. The foregoing shall not limit the effect of any provision of this Agreement by which consent is deemed granted, if objection is not made within a specified period.

(b) Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by the City is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final judgment beyond any right of appeal that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 24.08. "Including." "Including," as used in this Agreement, shall be deemed to mean "including, without limitation."

Section 24.09. Required Provisions of Law Controlling. It is the intention and understanding of the parties hereto that each and every provision of law required to be inserted in this Agreement should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Agreement shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

Section 24.10. Counterparts. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

Section 24.11. Maximum Interest Rate. In the event that any interest payable under this Agreement shall be deemed to exceed the maximum rate permitted by law, then the amount of interest to be paid shall be the maximum rate so permitted.

IN WITNESS WHEREOF, the Commissioner of the Department of Design and Construction, on behalf of The City of New York, and the Funding Recipient have executed this Agreement.

THE CITY OF NEW YORK

By: _____
Commissioner
Department of Design and Construction

Date: _____

Approved as to Form
Certified as to Legal Authority

Acting Corporation Counsel

Date: _____

[NAME OF FUNDING RECIPIENT]

By: _____
Title: _____

Date: _____

Tax ID: _____

STATE OF NEW YORK)
 : SS.:
COUNTY OF _____)

On this _____ day of _____, 20__, before me personally came _____, to me known and known to me to be Commissioner of the DEPARTMENT OF DESIGN + CONSTRUCTION of the CITY OF NEW YORK, the person described in and which executed the foregoing instrument; and he/she acknowledged to me that he/she executed the same for the purposes therein mentioned.

NOTARY PUBLIC

STATE OF NEW YORK)
 : SS.:
COUNTY OF _____)

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

NOTARY PUBLIC

EXHIBIT A

PROJECT BUDGET

(SEPARATE ATTACHMENT)

EXHIBIT B
INSURANCE

(SEPARATE ATTACHMENT)

Section 1.01 Obligation to Insure. From and after the dates and for the periods indicated below, Funding Recipient shall, and shall cause the Persons indicated below to, maintain, at its or their sole cost and expense and at no cost or expense whatsoever to the City, insurance coverage of the types, in the minimum limits and for the periods indicated below. Funding Recipient shall, and shall cause said Persons to, otherwise comply with the requirements of this Exhibit. Defined terms utilized and not otherwise defined herein shall have the meaning assigned to such terms in the Agreement to which this Exhibit is attached and is a part thereof.

Section 1.02 Required Insurance Coverages.

(a) Commercial General Liability Insurance: Funding Recipient. At all times during the Term Funding Recipient shall maintain Commercial General Liability Insurance protecting Funding Recipient and the Indemnitees (i.e., the City and its officials, employees, agents and servants) from claims for property damage and/or bodily injury, including death, that may arise from or in connection with the Project. Coverage for the Indemnitees shall be at least as broad as that provided by the most recent edition of Insurance Services Office (“**ISO**”) Form CG 20 26, and be primary with respect to any other Insurance coverage available to the Indemnitees, except for other insurance required to be maintained under subsection (b) herein.

(b) Commercial General Liability Insurance: First Tier Service Providers. From not less than ten (10) calendar days prior to the commencement of Construction Work by a First Tier Service Provider, its contractors and subcontractors until such Construction Work is complete to the reasonable satisfaction of the City, Funding Recipient shall cause said First Tier Service Provider to carry and maintain Commercial General Liability Insurance protecting Funding Recipient and the Indemnitees (i.e., the City and its officials, employees, agents and servants) from claims for property damage and/or bodily injury, including death, that may arise from or in connection with such Construction Work. Coverage for the Indemnitees shall be at least as broad as that provided by the most recent edition of ISO Form CG 20 26.

(c) Builder’s Risk Insurance. From not less than ten (10) calendar days prior to commencement of Construction Work by a Contractor until such Construction Work is complete to the reasonable satisfaction of the City, Funding Recipient shall, or shall cause such Contractor to, maintain, Builder’s Risk Insurance in an amount not less than the cost of restoration of the improvements constructed in connection with said Construction Work. The Builder’s Risk Insurance required under this Exhibit shall name the City as Loss Payee as its interest may appear, and specify that in the event a loss occurs at an occupied facility, occupancy shall be permitted without the consent of the insurance company.

(d) Property Special Perils Insurance. From and after Substantial Completion of the Project and at all times during the Performance Term, Funding Recipient shall maintain insurance against all risks of loss of or damage to the Premises customarily covered by “All Risk” or “Special Perils Form” (“**Special Perils Insurance**”) policies in the amount of the full replacement value of the Premises as determined from time to time.

(e) Statutory Coverages.

(i) Workers' Compensation Insurance and Disability Benefits Insurance. At all times during the Term, Funding Recipient shall, and shall cause each Contractor and subcontractor engaged in connection with the Project to, maintain Workers' Compensation Insurance and Disability Benefits Insurance in statutorily required amounts with respect to all persons employed by Funding Recipient and all such Contractors and subcontractors in connection with the Project.

(ii) Employers' Liability Insurance. At all times during the Term, Funding Recipient shall, and shall cause its Contractors and subcontractors to, maintain Employers' Liability Insurance in statutorily required amounts.

Section 1.03 General Requirements.

(a) The Persons that obtain the policies of insurance required under this Exhibit shall be responsible for the payment of all premiums payable in connection with said policies as well as all deductibles and self-insured retentions to which such policies may be subject, whether or not the City is an insured under the policy.

(b) The policies of insurance required under this Exhibit shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) The insurance coverages in the minimum amounts required under this Exhibit shall not relieve Funding Recipient or any other Person from any liability to the City and/or the City Indemnitees and shall not preclude the City from exercising its rights under this Agreement or from availing itself of any rights that the City may have against Funding Recipient or any other Person under applicable law.

(d) If notice of loss, damage, occurrence, accident, claim or suit is required under a policy mandated under this Exhibit, Funding Recipient shall notify in writing all insurance carriers that issued potentially responsive policies of the occurrence of any such event (including, Commercial General Liability Insurance carriers of the occurrence of any such event relating to Funding Recipient's own employees) no later than twenty (20) days after the occurrence thereof. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured."

(e) Funding Recipient shall require all First Tier Service Providers to provide insurance coverage and proof of insurance in accordance with the requirements in this Exhibit. In addition, Funding Recipient shall not permit any Contractor required to maintain an insurance policy under this Exhibit to commence operations at the Premises or any site adjacent thereto unless and until proof of such insurance has been submitted to and accepted by DDC's Director of Insurance Risk Management.

(f) In the event that any of insurance policies required under this Exhibit lapse, are revoked, suspended or otherwise terminated, for any cause whatsoever, Funding Recipient shall immediately cause all Construction Work at the Premises to stop, and shall not permit any such Construction Work to resume until authorized in writing by DDC's Director of Insurance Risk

(g) CCIP and OCIP. With the prior written consent of DDC one or more of the coverages required hereby may be provided by a Contractor as part of a Contractor Controlled Insurance Program (“**CCIP**”) and/or Funding Recipient as part of an Owner Controlled Insurance Program (“**OCIP**”).

Section 1.04 Proof of Insurance.

(a) On or prior to execution hereof and as a condition to the occurrence of the Effective Date, Funding Recipient shall provide proof of Workers’ Compensation, Employers’ Liability, and Disability Benefits insurance with regard to its own employees in a form acceptable to DDC’s Director of Insurance Risk Management.

(b) On or prior to execution hereof and as a condition to the occurrence of the Effective Date, Funding Recipient shall submit a Certificate of Insurance to DDC’s Director of Insurance Risk Management for every Commercial General Liability Insurance policy or Builder’s Risk Insurance policy that Funding Recipient and/or its Contractors are required to obtain under this Exhibit. All Certificates of Insurance shall be in a form acceptable to DDC’s Director of Insurance Risk Management and shall certify the issuance and effectiveness of the types of insurance described therein, each with the specified minimum limits and evidence of compliance with the Additional Insured or Loss Payee requirements hereunder. All Certificates of Insurance shall be accompanied by either a duly executed “Certification by Broker” in a form satisfactory to DDC’s Director of Insurance Risk Management or complete copies of all policies referenced in the Certificate of Insurance.

(c) Funding Recipient shall submit proof of insurance confirming the renewal of any insurance policy required hereunder to DDC’s Director of Insurance Risk Management no less than thirty (30) calendar days prior to the expiration date of such policy.

(d) Funding Recipient shall provide copies of any policy required by this Exhibit upon demand therefor by DDC’s Director of Insurance Risk Management or the New York City Law Department.

EXHIBIT C

CONTRACT REQUIREMENTS

(SEPARATE ATTACHMENT)

For purposes of these Contract Requirements, the capitalized terms used herein shall have the meanings assigned to such terms in the Funding Agreement.

Section 1.01. Independent Contractors. All First Tier Service Contracts shall provide that: (i) the First Tier Service Provider, its employees, contractors or subcontractors is an independent contractor, (ii) neither the First Tier Service Provider nor any of its employees, contractors and subcontractors shall be deemed to be an agent, servant, employee or contractor of the City by virtue of this Agreement or any agreement by and between Funding Recipient and such First Tier Service Provider related to the Project, or by virtue of any approval, permit, license, grant, right or other authorization given by the City, or any of its respective officers, officials, directors, members, agents or employees; and (iii) neither the First Tier Service Provider, nor any of its employees, contractors or subcontractors shall commence any legal proceeding against the City to recover any compensation which may be payable as a result of any work performed in connection with the Project.

Section 1.02. Indemnification. All First Tier Service Contracts shall provide that, to the extent permissible under applicable law, each First Tier Service Providers shall indemnify and hold harmless the Indemnitees (i.e., the City and its officials, members, directors, officers, employees, agents and servants) from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and court costs and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of, or in connection with, this Agreement, any agreement by and between Funding Recipient and such First Tier Service Provider and/or any agreement between such First Tier Service Provider and any of its employees, contractors and subcontractors, except to the extent that such liabilities, suits, obligations, fines, damages, penalties, claims costs, charges and/or expenses result from the negligence or willful misconduct of any of the Indemnitees.

Section 1.03. Legal Requirements. The Construction Management Contract and all other Construction Contracts included in the City-Funded Scope shall require compliance with applicable Requirements, including, but not limited to:

- (a) Labor Law Section 220-e and any regulation promulgated thereunder;
- (b) Labor Law Section 220, including, without limitation, Labor Law Section 220.3 regarding the payment of prevailing wage rates and supplemental benefits to laborers, workers and mechanics in accordance with the currently scheduled rates, as amended from time to time.
- (c) the New York City Noise Control Code (Administrative Code §24-216, et. seq. as amended, and related regulations); and
- (d) Local Laws 77 of 2003 (Ultra Low Sulfur Diesel Fuel), 38 of 2002 (Living Wage), 118, 119, 120, and 121 of 2005 (Environmentally Preferable Purchasing).

Section 1.04. Insurance. The Construction Management Contract and all other Construction Contracts included in the City-Funded Scope shall require that the Construction Manager, the Contractor(s) and their subcontractors obtain and maintain commercial general

liability insurance that satisfies the requirements of Exhibit B of this Agreement including, without limitation, naming, the City, and its officials, members, directors, officers and employees as Additional Insured.”

EXHIBIT D

EXECUTIVE ORDER 50

NON-DISCRIMINATION -- EQUAL EMPLOYMENT OPPORTUNITY

(SEPARATE ATTACHMENT)

A. This Agreement is subject to the requirements of Executive Order No. 50 (1980) (“**E.O. 50**”), as revised, and the Rules and Regulations set forth at 66 RCNY §10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. Funding Recipient agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owner’s, partners’ or shareholders’ race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status;

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

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Department of Small Business Services, Division of Labor Services (“**DLS**”); and

6. Will permit DLS to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. Funding Recipient understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of the DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of Funding Recipient; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring Funding Recipient in Default; and/or

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

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder, in one or more instances, may result in the Department declaring Funding Recipient to be non-responsible.

D. Funding Recipient agrees to include the provisions of the foregoing paragraphs in every contract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each contractor and vendor. Funding Recipient will take such action with respect to any contract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to a supply and service contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. Funding Recipient further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a contractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to a supply and service contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

EXHIBIT E

INVESTIGATIONS

(SEPARATE ATTACHMENT)

A. The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as

permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to the penalties under D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in C (1) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. 1. The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

2. The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

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

4. The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provision of this agreement, the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event Funding Recipient fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Funding Recipient, or affecting the performance of this agreement.

EXHIBIT F

OPINION OF COUNSEL

(SEPARATE ATTACHMENT)

The City of New York
acting by and through its
Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101

Re: Funding Agreement dated as of _____ (“Funding Agreement”) between The City of New York (the “City”) and _____ (“Funding Recipient”) and Declaration of Restrictive Covenant dated as of _____ by Funding Recipient in favor of the City (“Declaration”)

Ladies and Gentlemen:

We have acted as special counsel to Funding Recipient in connection with the execution and delivery of the Funding Agreement and the Declaration. Words and phrases defined in the Funding Agreement have the same meanings in this letter, unless otherwise specified.

In rendering this opinion we have reviewed the Funding Agreement, the Declaration and such other documents, records, agreements and certificates as we have deemed appropriate. In connection with the foregoing, we have also examined originals or copies satisfactory to us of all such corporate records, agreements, certificates and other documents as we have deemed relevant and necessary as a basis for the opinions hereinafter expressed.

In our examination, we have assumed: (i) the genuineness of all signatures (other than those of Funding Recipient); (ii) the authenticity of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies; (iii) the legal capacity of all natural persons acting on behalf of the City; (iv) regarding documents executed by the City, that the City has the power and capacity to execute, deliver and perform its obligations under such documents; (v) the due authorization of all requisite action with respect to such documents (including, but not limited to the execution and delivery thereof) by the City; and (vi) the validity and binding effect of such documents upon the City. As to any certain facts material to our opinions, we have relied, where appropriate, upon certificates of public officials.

Based upon and subject to the foregoing, we are of the opinion that:

1. Funding Recipient is validly existing and in good standing as a not-for-profit corporation under the Not-for-Profit Corporation Law of the State of New York.
2. The execution and delivery of the Funding Agreement, and the performance by Funding Recipient of its obligations thereunder, have been duly authorized by all necessary corporate action on the part of Funding Recipient.

3. The execution and delivery of the Declaration, and the performance by Funding Recipient of its obligations thereunder, have been duly authorized by all necessary corporate action on the part of Funding Recipient.

4. The Funding Agreement has been duly executed and delivered by Funding Recipient.

5. The Declaration has been duly executed and delivered by Funding Recipient.

6. The execution and delivery of the Funding Agreement, and the performance by Funding Recipient of its obligations thereunder, do not: (a) require any consent or approval by any Person which has not been given, (b) contravene the certificate of incorporation or by-laws of Funding Recipient, or (c) violate any provision of, or require any filing, registration, consent or approval under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Funding Recipient.

7. The execution and delivery of the Declaration, and the performance by Funding Recipient of its obligations thereunder, do not: (a) require any consent or approval by any Person which has not been given, (b) contravene the certificate of incorporation or by-laws of Funding Recipient, or (c) violate any provision of, or require any filing, registration, consent or approval under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Funding Recipient.

8. The Funding Agreement constitutes the legal, valid and binding obligation of Funding Recipient, enforceable against Funding Recipient in accordance with its terms.

9. The Declaration constitutes the legal, valid and binding obligation of Funding Recipient, enforceable against Funding Recipient in accordance with its terms.

The opinions set forth above are subject to the following qualifications:

(a) No person or entity other than the City or its successor or its counsel may rely or claim reliance on the opinions expressed herein. The City may not rely on this opinion in connection with any other transaction.

(b) The legality, binding effect and enforceability of the obligations of Funding Recipient under the Funding Agreement are subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and to general principles of equity, including (without limitation) concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

(c) The availability of certain remedies under the Funding Agreement is subject to principles of equity as courts having jurisdiction may impose, including (for example but not by way of limitation) the right of a court

(d) We are licensed to practice law in the State of New York and our opinion is therefore limited to the laws of the State of New York and the federal laws of the United States.

We assume no obligation to update or supplement this opinion to reflect any changes in any laws or court decisions which may hereafter occur. We do not render any opinion with respect to any matter other than those expressly set forth above.

Very truly yours,

SCHEDULE I

DESCRIPTION OF THE PROJECT

(SEPARATE ATTACHMENT)

SCHEDULE II
PAYMENT REQUISITION FORM
(SEPARATE ATTACHMENT)

**DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISIONS OF STRUCTURES AND TECHNICAL SUPPORT
PAYMENT REQUISITION: Part C
Estimate for Contract (or Task Order) Payment No. _____**

(Contractor to attach Part A and complete Lines 1-8 and Contractor's Certificate)

1. ORIGINAL CONTRACT (OR TASK ORDER) SUM	\$	
2. NET CHANGE BY REGISTERED CHANGE ORDERS (OR SUPPLEMENTAL TASK ORDERS).....	\$	
3. CONTRACT (OR TASK ORDER) SUM TO DATE (1 + or - 2)	\$	
4. TOTAL COMPLETED & STORED (Column H on Part A)	\$	
5. RETAINAGE/STORED MATERIALS WITHHOLDING		
A. _____% of Completed Work (Columns E + F on Part A)	\$	
B. <u>15</u> % of Stored Material (Column G on Part A)	\$	
Total Retainage/Withholding (Line 5A + 5B or Total in Column J in Part A + 5B) .	\$	
6. TOTAL EARNED LESS RETAINAGE/STORED MAT'L WITHHOLDING (Line 4 less Line 5 Total)	\$	
7. LESS TOTAL OF ALL PREVIOUSLY APPROVED PAYMENT REQUISITIONS	\$	
(Total of all Line 14 amounts from all prior Part C Requisitions)		
8. CURRENT PAYMENT DUE (Line 6 less Line 7)	\$	
9. AMOUNT WITHHELD BY CPM	\$	
REASONS:		
10. PAYMENT DUE THIS ESTIMATE (Line 8 less Line 9)	\$	
11. AMOUNT WITHHELD BY EAO	\$	
REASONS:		
12. PAYMENT AMOUNT APPROVED BY EAO (Line 10 less Line 11)	\$	
13. AMOUNT WITHHELD BY CFO	\$	
REASONS:		
14. PAYMENT AMOUNT APPROVED BY CFO (Line 12 less Line 13)	\$	

CONTRACTOR'S CERTIFICATE

The undersigned Contractor certifies that all items, units, quantities and prices of work and material shown on this estimate are correct; that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract between the Department of Design and Construction of the City of New York and (Contractor) dated _____, 19____, and all authorized changes thereto; that all Contract reports are attached; that all outstanding claims for labor, materials and equipment for the performance of said Contract have been paid in full in accordance with the requirements of said Contract, except the outstanding claims listed in the attached sheet, "Certificate of Contractor to the Comptroller"; that the above is a true and correct statement of the contract account up to and including the last day of the period covered by this estimate and that no part of the "Current Payment Due" has been received.

Signature _____	Federal taxpayer I.D. # _____
Name (Print) _____	Date _____
Title (Print) _____	(Invoice Date)

CONSTRUCTION PROJECT MANAGER'S CERTIFICATE

I certify that I have verified this estimate and that to the best of my knowledge and belief it is a true and correct statement of the work performed and materials supplied by the Contractor and that all work and material included in this estimate has been inspected by me or my duly authorized assistants and has been found to comply with the terms and conditions of the corresponding construction contract documents and authorized changes thereto. I further certify that I have verified that certificates of non-discrimination have been obtained from the Contractor and all Subcontractors who performed any work covered by this payment and that the Subcontractor's Payment Form, if applicable to this payment, has been obtained.

Contract Time _____ ccds	Signature _____ Date: _____
Time consumed to date _____ ccds	Name (Print) _____
Time elapsed _____ %	Title (Print) _____
Work completed _____ %	If CM signature above, Accepted by DDC Employee: _____

(DDC Employee Signature) (Sign-off date)

