

MAINTENANCE AGREEMENT FOR STREET SEATS

THIS AGREEMENT, dated and effective as of [REDACTED], 20__ between and among the City of New York (the “City”) acting by and through the New York City Department of Transportation (“DOT”) with offices at 55 Water Street, New York, NY 10041, and the [REDACTED] (“MAINTENANCE ENTITY”), a [REDACTED] with offices located at [REDACTED].

WITNESSETH

WHEREAS, MAINTENANCE ENTITY or its agents, employees, contractors installed a pre-approved temporary Street Seats (the “Street Seats” or “Amenities”) as more fully described in **Exhibit A**, and located at [REDACTED] in the Borough of [REDACTED] (the “Project Area”), as more fully described in **Exhibit B**; and

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

PART A. TERMS AND CONDITIONS

ARTICLE A.1. TERM

- A.1.1. This Agreement shall be for a term of eleven (11) months from the execution date of this Agreement (the “Term”), unless earlier terminated.
- A.1.2. Upon expiration or termination of this Agreement, DOT, or a contractor acting at DOT's request, may remove the Amenities and restore the Project Area to a condition acceptable to DOT. MAINTENANCE ENTITY shall pay for the actual cost of removal and restoration of the Project Area.

ARTICLE A.2. MAINTENANCE AND USAGE

- A.2.1. MAINTENANCE ENTITY shall provide, maintain, repair and/or replace the Street Seats located in the Project Area as set forth below:
- A.2.2. All maintenance, repair and/or replacement shall be performed in a safe, good and workmanlike manner to the reasonable satisfaction of DOT.
- A.2.3. Dirt, litter and obstructions shall be removed so as to maintain the Project Area (including the surface of drains and catch basis) in a clean, neat and good condition.
- A.2.4. Graffiti shall be regularly painted over or removed, within a reasonable timely manner after its appearance on the Street Seats.

- A.2.5. Any folding tables, chairs and umbrellas (“Moveable Street Furniture”) shall be cleaned and maintained as reasonably necessary.
- A.2.6. Snow and ice shall be removed from all walkways within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage. If necessary, Moveable Street Furniture shall be removed or protected and secured from the Project Area due to snow and/or ice conditions. Sand or snow melting agents shall be spread on all walkways, as needed, to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice. Signs shall be posted cautioning users of dangerous conditions due to snow and/or ice.
- A.2.7. Any planters and planting beds shall be kept reasonably free of litter and debris.
- A.2.8. Any plants shall be kept in planted areas at all times and they shall be watered and maintained in a reasonably clean and attractive condition.
- A.2.9. To the extent that MAINTENANCE ENTITY applies pesticides to any plants, MAINTENANCE ENTITY or its agents, employees, contractors, shall comply with Chapter 12 of the New York City Administrative Code.
- A.2.10. All required repairs and/or replacement will, in all respects, conform to the original installation of the Street Seats, unless prior written approval is obtained from DOT.
- A.2.11. Any and all required repairs and/or replacements will be performed promptly and all costs thereof shall be borne by MAINTENANCE ENTITY.
- A.2.12. In the event that any material originally installed is no longer available at the time of such repairs and/or replacement, MAINTENANCE ENTITY may substitute comparable material provided prior written approval is obtained from DOT.
- A.2.13. In the event that DOT determines, at its sole discretion, that an emergency condition for which MAINTENANCE ENTITY is responsible under the terms of this Agreement, MAINTENANCE ENTITY shall promptly take all steps necessary to alleviate the emergency condition as may be directed by DOT, which may include but not be limited to performing repair and/or replacement work on the Street Seats.
- A.2.14. The MAINTENANCE ENTITY shall solely purchase and retain ownership of the Street Seats platform, if any.
- A.2.15. The MAINTENANCE ENTITY shall install the Street Seats platform, if any, in a safe, appropriate manner and in full compliance with the approved design illustrated in Exhibit B.
- A.2.16. The MAINTENANCE ENTITY shall oversee and ensure pedestrian traffic is appropriately managed during the installation and operation of the Street Seats.

- A.2.17. The MAINTENANCE ENTITY shall oversee and ensure that the installation and removal of the Street Seats platform, if any, shall be completed in a safe and appropriate manner.
- A.2.18. The MAINTENANCE ENTITY shall provide and maintain, throughout the term of this Agreement, a twenty-four (24) hour, seven days a week emergency contact telephone number on file with DOT.
- A.2.19. The MAINTENANCE ENTITY shall, on or before the termination of the initial installation period, remove the Street Seats platform, if any, from the Project Area.
- A.2.20. The maximum seating the Street Seats shall accommodate at any one time is [REDACTED] adults. Moveable Street Furniture may include both chairs and benches. In addition, the MAINTENANCE ENTITY may provide an appropriate amount of shade structures and tables for the Street Seats. Moveable Street Furniture shall be of a safe, sturdy construction and be pre-approved by DOT.
- A.2.21. The MAINTENANCE ENTITY shall remove or secure on a daily basis the Moveable Street Furniture from the Street Seats at the end of the hours of operation specified in Article 1.15 below.
- A.2.22. The MAINTENANCE ENTITY expressly acknowledges and agrees that the Street Seats is a public space and is solely maintained for the benefit of the public and not for the benefit of any business including the MAINTENANCE ENTITY. Accordingly, the MAINTENANCE ENTITY acknowledges that it cannot and will not assert any claims or commence any actions against any party including, but not limited to, the City, DOT its agents, employees, officers, or directors by reason of, either directly or indirectly, interruption to business or loss of business.
- A.2.23. As the Street Seats is a public space, the MAINTENANCE ENTITY shall not prevent or restrict, in anyway, the general public from utilizing the Street Seats during hours of operation specified in Article 1.15 below.
- A.2.24. The MAINTENANCE ENTITY shall not provide waiter/waitress service, or take orders or provide any services or sales on the Street Seats or at the chairs, benches and tables thereon. Employees of MAINTENANCE ENTITY shall be permitted to bring pre-paid food or beverages to the Street Seats. Such pre-paid transactions shall be wholly performed within the MAINTENANCE ENTITY'S establishment.
- A.2.25. The sale of alcohol or tobacco products on the Street Seats shall be strictly prohibited and result in the immediate termination of this Agreement. Smoking shall be strictly prohibited on the Street Seats during hours of operation specified in Article 1.15 below.
- A.2.26. The MAINTENANCE ENTITY shall strictly adhere to the maximum hours of operation:

- A.2.26.1. Monday - TBD as per location;
- A.2.26.2. Tuesday - TBD as per location;
- A.2.26.3. Wednesday - TBD as per location;
- A.2.26.4. Thursday - TBD as per location;
- A.2.26.5. Friday - TBD as per location;
- A.2.26.6. Saturday - TBD as per location; and
- A.2.26.7. Sunday - TBD as per location.

A.2.27. Upon prior written approval of DOT, the MAINTENANCE ENTITY may reduce the maximum hours of operation.

A.2.28. The MAINTENANCE ENTITY shall clean the Street Seats on a daily basis. Such cleaning shall include, but not be limited to, chewing gum removal.

A.2.29. DOT retains the unequivocal and exclusive right to immediately suspend, for a period of time and without prior notice, the Street Seats usage at the Project Area for any reason whatsoever and at any time whatsoever.

A.2.30. The MAINTENANCE ENTITY, at its sole cost and expense, shall provide appropriate signage for the Street Seats. Such signage shall be affixed in prominent locations and read: "This Street Seats is public space and is not restricted to patrons of any particular business. Smoking is prohibited on this Street Seats". The MAINTENANCE ENTITY shall not, at any time, alter or remove such signage from the Street Seats. In addition, DOT reserves the exclusive right, at its sole discretion, to add further signage to the Street Seats at any time throughout the term of this Agreement.

A.2.31. Upon review and approval of the Street Seats platform design, if any, by DOT and its Traffic Division, the design and proposed installation methodology of the Street Seats platform, if any, shall be subject to an engineering review and certification by a New York State licensed engineer paid for by the MAINTENANCE ENTITY.

ARTICLE A.3. INSTALLATION PERIOD

A.3.1. The Street Seats shall be installed for _____ days on _____, 20__ to _____, 20__ and between the hours of _____ AM and _____ PM.

A.3.2. Upon expiration or termination of this Agreement, DOT, or a contractor acting at DOT's request, may remove the Street Seats platform, if any, and restore the Project Area to a condition acceptable to DOT. The MAINTENANCE ENTITY shall pay for the actual cost of removal and restoration of the Project Area.

ARTICLE A.4. COSTS

A.4.1. In consideration, DOT shall pay the MAINTENANCE ENTITY an amount of _____ thousand dollars (\$ _____) towards the cost of all work, labor and materials in connection with the Artwork, including, but not limited to, production,

fabrication, use, display, alteration or removal of said Artwork. All other costs associated with the Artwork shall be the sole responsibility of the MAINTENANCE ENTITY.

ARTICLE A.5.NOTICES

A.5.1. Each written notice, demand, request or other communication in connection with this Agreement shall be either served in person, with delivery of service acknowledged in writing by the party receiving the same, or by registered mail, return receipt requested to:

To DOT:

NAME
TITLE
ADDRESS
ADDRESS
EMAIL

cc: General Counsel
New York City Department of Transportation
55 Water Street, 9th Floor
New York, NY 10041

To MAINTENANCE ENTITY:

NAME
TITLE
ADDRESS
ADDRESS
EMAIL

Or to such other address as may be specified by written notice sent in accordance herewith.

A.5.2. Every notice, demand, request or other communication hereunder shall be deemed to have been given at the time of mailing of the aforesaid.

ARTICLE A.6.ENTIRE AGREEMENT

A.6.1. This Agreement, including Exhibit A and Exhibit B contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist, or to bind any of the parties hereto, or to vary any of the terms contained herein.

IN WITNESS WHEREOF, the City, acting by and through the Commissioner of the Department of Transportation, and the MAINTENACE ENTITY, acting by and through its _____, have executed this Agreement as of the date and year first above written.

NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

MAINTENANCE ENTITY

BY: _____

TITLE: _____

DATE: _____

EXHIBIT A

[Description of Amenities/ Final Approved Design]

EXHIBIT B

[Map of Project Area/ Site Photographs]

APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS

AGENCY: Transportation

CONTRACT: Maintenance Agreement for Street Seats

I hereby approve as to form the annexed contract by standard type of class. This approval is valid for two years and for a maximum of 200 agreements.

The above approval is made on the express understanding that the substantive language of the subject agreements will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, the blank spaces in the contracts requiring names, dates, dollar amounts or other similar details may be completed.

ACTING CORPORATION COUNSEL

Date: _____

PART B. GENERAL CONDITIONS

ARTICLE B.1. SUSPENSION

- B.1.1. DOT shall have the unconditional right to immediately suspend, without prior notice, this Agreement or any part hereof or any aspect of the MAINTENANCE ENTITY's responsibilities hereunder for any reason and at its sole discretion.
- B.1.2. The MAINTENANCE ENTITY shall have no liability in connection with the DOT's suspension and, for the avoidance of doubt, upon the suspension by DOT of this Agreement, the MAINTENANCE ENTITY shall have no further obligations hereunder.

ARTICLE B.2. TERMINATION

- B.2.1. This Agreement shall be terminable by DOT upon ten (10) days written notice to MAINTENANCE ENTITY, if MAINTENANCE ENTITY is in default of its obligations hereunder.
- B.2.2. This Agreement shall be terminable by DOT without cause upon thirty (30) days written notice to MAINTENANCE ENTITY.
- B.2.3. Should MAINTENANCE ENTITY fail to carry out its obligations set forth in this Agreement, DOT, after ten (10) days written notice thereof to MAINTENANCE ENTITY, may carry out necessary maintenance using material of its own choice, reconstruction or repair work and charge the reasonable costs thereof and other administrative costs thereto to MAINTENANCE ENTITY or remove the Amenities permanently and replace them in accordance with DOT specifications, standards and policies.
- B.2.4. If this Agreement expires or is terminated, as provided herein, all rights of the MAINTENANCE ENTITY herein shall be terminated without any claim for damages against the City, DOT or its agents, employees, officers, or directors by reason of such expiration or termination.

ARTICLE B.3. RECORDS

- B.3.1. MAINTENANCE ENTITY shall maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.
- B.3.2. MAINTENANCE ENTITY shall retain all books, records, and other documents relevant to this Agreement for six (6) years after expiration or termination of this Agreement whichever is later and make copies thereof available and submit such copies to DOT upon request. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. City,

State and Federal auditors or any other persons duly authorized by the DOT shall have full access to and the right to examine any of said materials during said period.

- B.3.3. MAINTENANCE ENTITY shall provide to DOT notification of all Amenities that are installed, maintained, repaired and/or replaced. Such notification shall be provided to DOT on a quarterly basis and shall be sent to DOT pursuant to Article 15 or by email as directed by DOT .
- B.3.4. The records for all installations, repairs, maintenance and replacements or removals, as well as a list of the Amenities subject to this Agreement, shall be provided to DOT by MAINTENANCE ENTITY by January 15th of the year following the year for which the records are created, or at any other time upon request of DOT.
- B.3.5. All books, records and accounts related to the display, maintenance and removal of the Amenities are subject to audit by the City, including the City Comptroller, pursuant to the powers and responsibilities conferred upon the City by the New York City Charter and the Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.

ARTICLE B.4. PERSONAL LIABILITY

- B.4.1. No officer, agent, principal, member, manager or employee of DOT, the City or the MAINTENANCE ENTITY shall be charged personally with any liability or held liable under any term or provision of this Agreement by reason of any breach or alleged breach thereof.

ARTICLE B.5. INDEPENDENT CONTRACTOR STATUS

- B.5.1. The MAINTENANCE ENTITY and DOT agree that the Entity is an independent contractor, and not an employee of DOT or the City of New York.

ARTICLE B.6. EMPLOYEES OF MAINTENANCE ENTITY

- B.6.1. All experts, contractors, consultants, employees or other agents of the MAINTENANCE ENTITY who are engaged by the MAINTENANCE ENTITY to perform work under this Agreement are neither employees of the City nor under contract to the City for this project and the MAINTENANCE ENTITY alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement.

ARTICLE B.7. OTHER REMEDIES

- B.7.1. The exercise by the City of any remedy set forth herein shall not be deemed a waiver by the City of any other legal or equitable remedy contained in this Agreement or provided under any applicable law.
- B.7.2. Nothing in this Agreement shall be construed so as to limit in any way the City's right to perform any work or provide any service in connection with the Project Area which it may deem necessary or proper, at its cost and expense.

ARTICLE B.8. INDEMNIFICATION

- B.8.1. To the fullest extent permitted by law, MAINTENANCE ENTITY shall indemnify, defend and hold the City and its officials and employees ("Indemnitees") harmless against any and all claims, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the MAINTENANCE ENTITY's obligations under this Agreement and/or the MAINTENANCE ENTITY's failure to comply with the law or any of the requirements of this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by the MAINTENANCE ENTITY, the Indemnitees shall be partially indemnified by the MAINTENANCE ENTITY to the fullest extent permitted by law.

ARTICLE B.9. INSURANCE

- B.9.1. From the date this Agreement is executed through the date of its expiration or termination, MAINTENANCE ENTITY shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein.
- B.9.2. MAINTENANCE ENTITY is authorized to undertake or maintain operations under this Agreement only during the effective period of all required coverage.
- B.9.3. MAINTENANCE ENTITY shall secure and maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the amount of at least Three Million Dollars (\$3,000,000.00) aggregate limit. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Agreement. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made".
 - B.9.3.1. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

- B.9.4. MAINTENANCE ENTITY shall secure and maintain Worker's Compensation insurance, Employers Liability insurance and Disability Benefits insurance on behalf of, or with regard to, all employees involved in MAINTENANCE ENTITY's operations under this Agreement, and such insurance shall comply with the laws of the State of New York.
- B.9.5. With regards to all operations under this Agreement, MAINTENANCE ENTITY shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest editions of ISO Form CA0001.
- B.9.6. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commissioner.
- B.9.7. Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. MAINTENANCE ENTITY shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.
- B.9.8. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to MAINTENANCE ENTITY under all primary, excess and umbrella policies covering operations under this Agreement.
- B.9.9. All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, New York City Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.
- B.9.10. All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

- B.9.11. Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to or upon execution of this Agreement.
- B.9.12. For Workers' Compensation, Employers Liability Insurance, Disability Benefits, insurance policies, MAINTENANCE ENTITY shall submit one of the following:
- B.9.12.1. Certificate of Worker's Compensation Insurance;
 - B.9.12.2. State Insurance Fund Certificate of Workers' Compensation Insurance;
 - B.9.12.3. Request for WC/DB Exemption (Form CE-200);
 - B.9.12.4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
 - B.9.12.5. Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.
- B.9.13. For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability Benefits insurance, MAINTENANCE ENTITY shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in MAINTENANCE ENTITY's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by the required additional insured endorsements and either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.
- B.9.14. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Agreement. Such Certificates of Insurance shall comply with Articles 9.12 and 9.13 above.
- B.9.15. Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive MAINTENANCE ENTITY's obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive MAINTENANCE ENTITY's liability for its failure to do so.
- B.9.16. MAINTENANCE ENTITY shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by the Commissioner or the New York City Law Department.

- B.9.17. MAINTENANCE ENTITY may satisfy its insurance obligations under this Article through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- B.9.18. MAINTENANCE ENTITY shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.
- B.9.19. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, MAINTENANCE ENTITY shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to the MAINTENANCE ENTITY's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, 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." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. MAINTENANCE ENTITY shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.
- B.9.20. MAINTENANCE ENTITY's failure to secure and maintain insurance in complete conformity with this Article, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
- B.9.21. Insurance coverage in the minimum amounts provided for in this Article shall not relieve MAINTENANCE ENTITY of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.
- B.9.22. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article, MAINTENANCE ENTITY shall at all times fully cooperate with the City with regard to such potential or actual claim.
- B.9.23. MAINTENANCE ENTITY waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of MAINTENANCE ENTITY and/or its employees, agents, or servants of its contractors or subcontractors.

B.9.24. In the event MAINTENANCE ENTITY requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement and requires such entity to name MAINTENANCE ENTITY as an additional insured under such insurance, MAINTENANCE ENTITY shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

B.9.25. In the event MAINTENANCE ENTITY receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, MAINTENANCE ENTITY shall immediately forward a copy of such notice to both the Commissioner, New York City Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, MAINTENANCE ENTITY shall ensure that there is no interruption in any of the insurance coverage required under this Article.

ARTICLE B.10. ASSIGNMENT

B.10.1. MAINTENANCE ENTITY shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this Agreement, unless the previous written consent of the Commissioner of DOT shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments.

B.10.2. Notwithstanding any provisions contained herein to the contrary, it is specifically understood and agreed that in the performance of the terms, covenants, and conditions of this Agreement, MAINTENANCE ENTITY or any subsequent mutually agreed upon assignee and any of its employees, agents, independent contractors, and sub-contractors, successors and assigns shall not be deemed to be acting as agents, servants, or employees of DOT or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or other authorization given by the DOT or the City or any of its officers, agents or employees pursuant to this Agreement, but shall be deemed to be performing services for MAINTENANCE ENTITY, and MAINTENANCE ENTITY shall be deemed solely responsible for all acts taken by them pursuant to this Agreement.

ARTICLE B.11. NO ADVERTISING

B.11.1. MAINTENANCE ENTITY shall be prohibited from placing or causing to be placed any advertising in the Project Area.

ARTICLE B.12. NO MODIFICATION

B.12.1.No modification, amendment, waiver, or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose, unless in writing and duly executed by the party against whom same is asserted.

ARTICLE B.13. INVESTIGATION CLAUSE

B.13.1.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.13.2.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, the Port Authority of New York and New Jersey, any local development corporation within the City or any public benefit corporation organized under the laws of the State of New York, or

B.13.3.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, any political subdivision thereof or any local development corporation within the City, then

B.13.4.The Commissioner or Agency Head whose Agency is a party in interest to the transaction, 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 shall attach for the failure of a person to testify.

B.13.5.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 the section below without the City incurring any penalty of damages for delay or otherwise.

B.13.6. The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

B.13.6.1. 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, transacting business with or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

B.13.6.2. 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 have been 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.

B.13.7. The Commissioner or Agency Head shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors contained in the sections below. He/She may also consider, if relevant and appropriate, the criteria established in the sections below, in addition to any other information which may be relevant and appropriate:

B.13.8. 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.

B.13.9. 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.

B.13.10. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

B.13.11. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties stated 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 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.

B.13.12. Definitions:

- B.13.13. 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.
- B.13.14. The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal or employee.
- B.13.15. 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.
- B.13.16. 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.
- B.13.17. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may, in his/her sole discretion, terminate this Agreement upon not less than three (3) days’ written notice in the event the Company 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 non-City party or parties, or affecting the performance of this Agreement.

ARTICLE B.14. ENTIRE AGREEMENT

- B.14.1. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist, or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE B.15. CITY’S RIGHTS

- B.15.1. Nothing in this Agreement shall be construed so as to limit in any way the City’s right to perform any work or provide any service in connection with the Project Area which it may deem necessary or proper, including permanent removal and replacement to a safe condition.

ARTICLE B.16. COMPLIANCE WITH LAWS

- B.16.1. MAINTENANCE ENTITY shall comply with all applicable provisions of federal, state and local laws, rules, and regulations, and DOT specifications, standards and policies.

Upon request from time to time, DOT shall advise the MAINTENANCE ENTITY as to DOT's specifications, standards and policies.

ARTICLE B.17. NON-DISCRIMINATION

B.17.1. The MAINTENANCE ENTITY agrees not to engage in any unlawful discriminatory practice as defined and pursuant to the terms of Title VIII of the New York City Administrative Code.

ARTICLE B.18. REPRESENTATIONS

B.18.1. MAINTENANCE ENTITY makes the following representations:

B.18.2. MAINTENANCE ENTITY has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this Agreement.

B.18.3. MAINTENANCE ENTITY has not employed any person to solicit or procure this Agreement, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with obtaining the Agreement.

ARTICLE B.19. NO AGENCY

B.19.1. Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that in the performance of the terms, covenants, and conditions of this Agreement, the MAINTENANCE ENTITY or any subsequent mutually agreed upon assignee and any of its employees, agents, independent contractors, and sub-contractors, successors and assigns shall not be deemed to be acting as agents, servants, or employees of DOT or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or other authorization given by the DOT or the City or any of its officers, agents or employees pursuant to this Agreement, but shall be deemed to be performing services for the MAINTENANCE ENTITY, and the MAINTENANCE ENTITY shall be deemed solely responsible for all acts taken by them pursuant to this Agreement.

ARTICLE B.20. WAIVER OF JURY TRIAL

B.20.1. MAINTENANCE ENTITY hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against the MAINTENANCE ENTITY or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this Agreement with regard to any matter whatsoever in any way connected with this Agreement including, but not limited to, the relationship between the City and the MAINTENANCE ENTITY. This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this Agreement or any terms hereof.

ARTICLE B.21. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

- B.21.1. This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the MAINTENANCE ENTITY and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this Agreement or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, it is understood that:
- B.21.2. If the City initiates any action arising out of this Agreement against MAINTENANCE ENTITY in Federal Court or in New York State Court, service of process may be made on MAINTENANCE ENTITY either by personal service upon an officer or authorized agent of MAINTENANCE ENTITY, wherever MAINTENANCE ENTITY may be found, or by registered mail addressed to MAINTENANCE ENTITY at the address set forth in this Agreement, or to such other address as MAINTENANCE ENTITY may provide to DOT or the City in writing; and
- B.21.3. With respect to any action arising out of this Agreement between the City and MAINTENANCE ENTITY in New York State Courts, MAINTENANCE expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.
- B.21.4. With respect to any action arising out of this Agreement between the City and MAINTENANCE ENTITY in Federal Court located in New York City, MAINTENANCE ENTITY expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.
- B.21.5. If MAINTENANCE ENTITY commences any action arising out of this Agreement against the City in a court located other than in the County, City and State of New York, upon request of the City, MAINTENANCE ENTITY shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, MAINTENANCE ENTITY shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.
- B.21.6. All disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York.

ARTICLE B.22. CLAIMS AND ACTIONS THEREON

- B.22.1. No action at law or proceeding in equity against the City or DOT shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless MAINTENANCE ENTITY shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.
- B.22.2. No action shall lie or be maintained against the City by MAINTENANCE ENTITY upon any claims based upon this Agreement unless such action shall be commenced within six months after the date of filing with the Comptroller of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.
- B.22.3. In the event any claim is made or any action brought in any way relating to the Agreement herein, MAINTENANCE ENTITY shall diligently render to DOT and/or the City without additional compensation any and all assistance which DOT and/or the City may require of MAINTENANCE ENTITY.

ARTICLE B.23. CLAIM AGAINST OFFICERS OR EMPLOYEES

- B.23.1. No claim whatsoever shall be made by MAINTENANCE ENTITY against any officer, agent, employee or volunteer of the City for, or on account of, anything done or omitted in connection with this Agreement.

ARTICLE B.24. SEVERABILITY

- B.24.1. Should any provision of this Agreement be deemed to be invalid or unenforceable by any Court of competent jurisdiction, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect.

ARTICLE B.25. ALL LEGAL PROVISIONS DEEMED INCLUDED

- B.25.1. It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in the Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, 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 hereunder.

ARTICLE B.26. LIMITATION

B.26.1. Nothing in this Agreement shall be construed so as to limit in any way the DOT's right to perform any work or provide any service in connection with the Project Area which DOT may deem necessary or proper.

ARTICLE B.27. CONFLICT OF INTEREST

B.27.1. No officer, agent, employee, or representative of the City, DOT, the MAINTENANCE ENTITY received any payment or other consideration for the making of this Agreement nor has any legal interest, directly or indirectly, in this Agreement.

ARTICLE B.28. EFFECTIVE DATE

B.28.1. The provisions of this Agreement shall be effective upon the complete execution of this Agreement.

ARTICLE B.29. BINDING

B.29.1. The provisions herein shall be binding on heirs, successors and assigns of the parties hereto.

ARTICLE B.30. COUNTERPARTS

B.30.1. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.