

**FOR EQUIPMENT PURCHASES TO BE FUNDED WITH CAPITAL BUDGET MONIES ONLY**

**FUNDING AGREEMENT**

between

**NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION**

and

**[FUNDING RECIPIENT]**

Dated as of \_\_\_\_\_, 20\_\_

Relative to acquisition and installation of equipment for  
[describe type of facility]  
At [address]

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<b>ENROLLMENT FORM</b>	

FUNDING AGREEMENT dated as of \_\_\_\_\_ (“**Agreement**”) between THE CITY of NEW YORK (“**City**”) acting by and through its Department of Design and Construction (hereinafter defined as “**DDC**”), having its principal office at 30-30 Thomson Avenue, Long Island City, New York 11101, and \_\_\_\_\_ (“**Funding Recipient**”), a corporation organized pursuant to the Not-For-Profit Corporation Law of the State of New York, having its principal office at \_\_\_\_\_, New York \_\_\_\_\_.

WITNESSETH

WHEREAS, Funding Recipient seeks to acquire certain items of equipment (the “**Equipment**”) for use in connection with the programs and services that it provides; and

WHEREAS, the Equipment will be installed and used at certain premises of Funding Recipient known as \_\_\_\_\_ (the “**Premises**”); and

WHEREAS, Funding Recipient has requested that the City provide funding for the acquisition of certain of the Equipment necessary to provide its programs and services ; and

WHEREAS, the City has determined that it is in the best interest of the people of the City that community based not-for-profit organizations or other public service organizations be provided funds to assist them in providing a City service; and

WHEREAS, the City has appropriated \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Funding**”) in its capital budget (“**Capital Budget**”) to subsidize Eligible Costs (as defined in Article 1 below) incurred and paid by Funding Recipient for the purchase of Eligible Equipment (as defined in Article 1 below); and

WHEREAS, Funding Recipient and the City consider a funding agreement to be an appropriate mechanism to allow Funding Recipient to acquire and install Eligible Equipment for use in connection with the programs and services that Funding Recipient provides, and the City to reimburse Funding Recipient with City Capital Budget funds for Eligible Costs incurred and paid by Funding Recipient for the purchase and installation of such Eligible Equipment; and

WHEREAS, in order to provide security for the performance and observance of the terms, covenants and conditions on the part of Funding Recipient to be performed and/or observed hereunder and under the other Transactional Documents (as defined in Article 1 hereof), including, without limitation, the City Purpose Covenant (as defined in Section 9.02 hereof), simultaneously herewith Funding Recipient has executed and delivered to the City a City purpose security agreement (“**Security Agreement**”), dated as of the date hereof, pursuant to which Funding Recipient has granted to the City a first Lien (as defined in Article 1 hereof) and prior security interest in and to all Eligible Equipment paid for with the proceeds of the Funding and other Collateral more fully described in the Security Agreement.

NOW, THEREFORE, the City and Funding Recipient agree as follows:

## ARTICLE 1

### CERTAIN DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings (all terms defined in this Article 1 or in other provisions of this Agreement in the singular to have the same meaning when used in the plural and vice versa):

“**Affiliate**” means (a) any Person that is a principal of Funding Recipient by virtue of his/her/its membership in Funding Recipient’s governing body or participation in the management and/or operation 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.

“**Budget**” has the meaning provided in Section 5.01(e) hereof.

“**Business Day**” means any day other than a Saturday, Sunday, legal holiday, a day on which the City is closed for business or a day on which banking institutions in New York City are authorized by law or executive order to close.

“**Capital Budget**” has the meaning provided in the Preamble hereof.

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

“**City Purpose Covenant**” has the meaning provided in Section 9.02 hereof.

“**Collateral**” has the meaning provided in the Security Agreement.

“**Commissioner**” has the meaning provided in Section 14.02 hereof.

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

“**Default**” means any condition or event, or failure of any condition or event to occur, which constitutes, or after the giving of notice or the passage of time, or both, would constitute an Event of Default.

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

“**Effective Date**” has the meaning provided in Section 2.01 hereof.

“**Eligible Costs**” means costs and expenses incurred by Funding Recipient after the date of the appropriation of the Funding by the City for the acquisition, delivery and installation of Eligible Equipment, provided that, in the sole and absolute discretion of the City, the costs and expenses are financeable by the City with the proceeds of tax-exempt bonds pursuant to the New York State Local Finance Law, the Internal Revenue Code of 1986, as

amended, the City Charter, the directives of the Comptroller and any other applicable laws or regulations. Eligible Costs shall not include any fee to Funding Recipient or any Affiliate or employee, any interest or fee in connection with any loan used to pay any costs of the purchase of Eligible Equipment, any overhead of Funding Recipient or the salary or expenses related to any officer or employee of Funding Recipient or any Affiliate.

**“Eligible Equipment”** means Equipment that satisfies the following conditions: (a) the costs for the acquisition of the Equipment by Funding Recipient constitute Eligible Costs, (b) the Equipment shall not be of a type that is intended to be annexed to the Premises, or that would be operational only if affixed to the Premises, to the extent that it might be deemed to constitute a fixture and an interest in it arises under real property law, (c) the Equipment may be paid for with funds appropriated by the City in its Capital Budget, (d) the Equipment is not subject to any lease arrangement, title retention agreement, purchase money mortgage or other Lien, (e) the Equipment has an expected useful life of no less than five (5) years from the date of installation, (f) the Equipment is new, fit for the purpose for which it was purchased and complies with all applicable Requirements, (g) the Equipment is protected by manufacturer’s and/or vendor’s warranties, and (h) the Equipment is procured in accordance with the requirements of Article 4 hereof.

**“Eligible Vendors”** has the meaning provided in Section 4.01(a) hereof.

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

**“Event of Default”** has the meaning provided in Section 15.01 hereof.

**“Federal Courts”** has the meaning provided in Section 17.02 hereof.

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

**“Funding Recipient”** has the meaning provided in the Preamble hereof.

**“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.

**“Indemnitees”** has the meaning provided in Section 12.01 hereof.

**“Late Charge Rate”** means the rate of interest charged by the City from time to time for delinquent real property taxes.

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

“**New York State Courts**” has the meaning provided in Section 17.02 hereof.

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

“**Performance Term**” has the meaning provided in Section 9.02 hereof.

“**Person**” means (except as otherwise indicated in this Agreement) 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 Preamble hereof.

“**Principals**” means, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, and any individual holding equivalent positions.

“**Requirements**” means any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of all Governmental Authorities currently in force or hereafter adopted applicable to Funding Recipient, its operations and activities and/or the Equipment (including, without limitation, the Green Buildings Standards (New York City Charter Section 224.1 and Title 43, Chapter 10 of the Rules of the City of New York), and any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by this Agreement.

“**Requisition**” has the meaning provided in Section 5.02(a) hereof.

“**Security Agreement**” has the meaning provided in the Preamble hereof.

“**Small Purchases**” has the meaning provided in Section 4.01(d) hereof.

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

“**Transactional Documents**” means, collectively, this Agreement, the Security Agreement and each and every other agreement, document or indenture by which Funding Recipient or any Affiliate is bound relating to or materially affecting the acquisition of the Equipment, the use of the Equipment in accordance with the City Purpose Covenant, or the implementation of the transactions contemplated by this Agreement.

## ARTICLE 2

### TERM

Section 2.01. Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall expire, except as to those provisions that expressly survive the termination or expiration hereof, upon expiration of the Performance Term unless sooner terminated by the City as provided below. All rights, remedies and liabilities arising prior to the termination or expiration of the Term shall survive the date of termination or expiration, as the



case may be. For the purposes hereof “**Effective Date**” means the earliest date on which all of the following shall have occurred: (a) each of the City and Funding Recipient shall have executed and delivered this Agreement; (b) this Agreement shall have been registered by the Comptroller in accordance with City procedures; and (c) Funding Recipient shall have delivered to the City all the submissions required by Section 5.01 hereof.

Section 2.02. Extension of Term. At the request of Funding Recipient, the City may, in its sole discretion, grant an extension of the Term. Any such request must state the reasons an extension of the Term is necessary and specify the total number of days of the requested extension of the Term.

### ARTICLE 3

#### THE FUNDING

##### Section 3.01. Agreement to Fund.

(a) Subject to the terms, covenants and conditions of this Agreement and the Security Agreement and in reliance upon the representations and warranties made by Funding Recipient in this Agreement and the Security Agreement, the City agrees to disburse to Funding Recipient up to the lesser of (a) the amount of the Funding, and (b) the aggregate amount of Eligible Costs incurred by Funding Recipient and reimbursable to Funding Recipient by the City pursuant to this Agreement.

(b) Funding Recipient acknowledges that the City has not represented or warranted that the Funding will be sufficient to pay the cost of acquiring and installing the Equipment or for the operation thereof in accordance with the City Purpose Covenant. Funding Recipient agrees that Funding Recipient will be solely responsible for any excess over the amount of the Funding in the costs of acquiring, installing and operating the Equipment in accordance with the City Purpose Covenant. Funding Recipient further acknowledges that the Funding is not a fee or other compensation earned by or paid to Funding Recipient.

##### Section 3.02. Electronic Funds Transfer.

(a) In accordance with Section 6-107.1 of the New York City Administrative Code, 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, Funding Recipient shall designate one financial institution or other authorized payment agent and shall complete the “EFT Vendor Payment Enrollment Form” attached hereto as Schedule I in order to provide the Commissioner of Finance with information necessary for Funding Recipient to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Funding Recipient shall constitute satisfaction in full by the

City of the amount of the disbursement required under this Agreement. The account information supplied by the Funding Recipient to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

(b) The City's Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the City 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.

Section 3.03. The City's Right to Terminate. The City, in its sole discretion, may notify Funding Recipient that the City has determined that the cost of purchasing, delivering and installing all Equipment necessary for the performance of Funding Recipient's obligations under the City Purpose Covenant will likely exceed the funds available to Funding Recipient. If within thirty (30) days after receipt of such notice, Funding Recipient fails to provide the City with sufficient evidence that such costs will not exceed the funds available to Funding Recipient, or if the evidence submitted by Funding Recipient is not satisfactory to the City, the City may terminate this Agreement in whole or in part, or reduce or reallocate the Funding upon not less than thirty (30) days prior notice.

Section 3.04. Funding May Cure Defaults. The City may apply the Funding in full or in part to reimburse itself for any costs and/or expenses incurred by it in connection with any Default on the part of Funding Recipient under this Agreement. Any portion of the Funding so applied by the City shall be deemed a disbursement of the Funding in accordance with the terms of this Agreement.

## ARTICLE 4

### PROCUREMENT REQUIREMENTS

Section 4.01. Procurement of Equipment.

(a) Eligible Vendors. Funding Recipient may acquire Eligible Equipment and secure services for the delivery and installation thereof only from vendors that are acceptable to the City in the City's sole and absolute discretion ("**Eligible Vendors**").

(b) Funding Recipient must obtain bids from at least three (3) firms from the list of Eligible Vendors. Funding Recipient must submit to the City a statement signed by an officer of Funding Recipient identifying the Eligible Vendor that Funding Recipient intends to select, and giving specific reasons for Funding Recipient's selection. Funding Recipient must accept the lowest bid unless it obtains the City's prior written consent to a higher bidder. Prior to Funding Recipient's acceptance of a bid, the City reserves the right at any time to withdraw its prior approval of the vendor chosen by Funding Recipient if such vendor has ceased to be an Eligible Vendor.

(c) List of Proposed Vendors. Prior to purchasing any Equipment, Funding Recipient shall submit to the City a list that includes the names of at least three (3) vendors, the

names of the principals of the vendors and such other information regarding the proposed vendors and procurement as the City shall reasonably request. After receipt of all the requisite information, the City shall make a good faith effort to advise Funding Recipient, within thirty (30) Business Days for purchases less than One Hundred Thousand Dollars (\$100,000), and within forty (40) Business Days for purchases of One Hundred Thousand Dollars (\$100,000) or more, as to which vendors are acceptable or unacceptable to the City.

(d) Bidding Requirements. Funding Recipient must obtain bids from at least three (3) firms from the list of Eligible Vendors. Funding Recipient must submit to the City a statement signed by an officer of Funding Recipient identifying the Eligible Vendor that Funding Recipient intends to select, and giving specific reasons for Funding Recipient's selection. Funding Recipient must accept the lowest bid unless it obtains the City's prior written consent to a higher bidder. Prior to Funding Recipient's acceptance of a bid, the City reserves the right at any time to withdraw its prior approval of the vendor chosen by Funding Recipient if such vendor has ceased to be an Eligible Vendor.

(e) Small Purchases. Notwithstanding the requirements of Section 4.01(c) above, with respect to procurements of any item of Eligible Equipment with a cost of Five Thousand Dollars (\$5,000) or less ("**Small Purchases**"), the City may, in its sole and absolute discretion, authorize Funding Recipient to obtain a bid from only one (1) Eligible Vendor, it being understood and agreed that procurement requirements shall not be artificially divided so as to constitute a Small Purchase. Accordingly, items of Eligible Equipment that constitute a unit shall be deemed to constitute one (1) item of Eligible Equipment and all procurements of similar or substantially similar items of Eligible Equipment shall be deemed to constitute one procurement. In each such case, the cost of all such items of Equipment shall be aggregated for the purpose of determining whether a procurement of Eligible Equipment constitutes a Small Purchase hereunder.

(f) Sole Source. Notwithstanding the requirements of Section 4.01(c) above, the City may, in its sole and absolute discretion, authorize Funding Recipient to procure Equipment and/or the necessary related services on a sole source basis from a vendor identified by Funding Recipient who otherwise constitutes an Eligible Vendor, if only such vendor is capable of supplying the requisite Equipment or services and the Equipment to be provided thereby constitutes Eligible Equipment. In such instances, Funding Recipient shall provide the City with such information regarding the selection of the vendor in question as the City shall require.

(g) Single Source. Notwithstanding the requirements of Section 4.01(c) above, although two (2) or more vendors can supply the requisite Equipment and/or provide the necessary related services, the City may, in its sole and absolute discretion, upon written findings setting forth the material and substantial reasons therefor, authorize Funding Recipient to procure all or any portion of the Equipment on a single source basis from vendor(s) identified by Funding Recipient, provided that such Equipment would otherwise constitute Eligible Equipment and the vendor(s) thereof otherwise constitute Eligible Vendors. In such instances, Funding Recipient shall provide the City with the circumstances leading to the selection of the vendor, including the alternatives considered, the rationale for selecting the vendor in question and the basis upon which it determined the cost was reasonable.

(h) National Purchasing Contract. Funding Recipient may also purchase Eligible Equipment pursuant to a national purchasing contract entered into by Funding Recipient from an Eligible Vendor chosen as the lowest among at least three (3) bidders.

Section 4.02. Affiliates. Subject to the provisions of Section 4.01(c), costs paid or incurred by Funding Recipient to any Eligible Vendor that is an Affiliate may be paid with the proceeds of the Funding only to the extent that such costs do not exceed an amount (to be determined by the City, in its reasonable discretion) that would have been paid by Funding Recipient to an unrelated party in an arms length transaction.

## ARTICLE 5

### DISBURSEMENT OF THE FUNDING

Section 5.01. Documents Required Prior to the Effective Date. Funding Recipient shall submit to the City each of the following documents, and the receipt and approval by the City of each such document shall be a condition precedent to the occurrence of the Effective Date:

(a) Budget. A budget satisfactory to the City in form and substance (the “**Budget**”) that identifies the Eligible Equipment that Funding Recipient proposes to acquire with the proceeds of the Funding and states the costs for the acquisition thereof. The Budget shall be subject to the City’s approval and may only be amended with the City’s prior written consent. The amount which the City shall disburse for any item of Eligible Equipment shall not exceed the cost therefor set forth in the approved Budget. Funding Recipient shall promptly refund any excess disbursements made by the City upon the City’s request. If the amount payable for any item of Eligible Equipment exceeds the amount payable therefor in the Budget, Funding Recipient shall be responsible for the balance. The Budget is attached hereto and made a part hereof as **Exhibit A**.

(b) Insurance Policies. Copies of certificates (or at the request of the City, original certificates), in form and substance reasonably satisfactory to the City, evidencing the insurance policies described in **Exhibit B** hereto together with proof of payment of premiums; provided, however, that the City shall be given certified copies, signed by an authorized representative of the insurer, of the policies evidenced by such certificates, upon request therefor.

(c) Lien Searches. A UCC, judgment and tax lien search, satisfactory to the City in all respects, with respect to Funding Recipient, the Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding and other Collateral pledged by Funding Recipient as security for the performance of its obligations under the Transactional Documents.

(d) The Security Agreement and Evidence of Perfection of the City’s Lien as a First Priority Lien. The Security Agreement duly executed and delivered by Funding Recipient together with evidence reasonably satisfactory to the City that the City’s lien on the Eligible Equipment and other Collateral pledged by Funding recipient as security for its obligations under the Transactional Documents is a first priority Lien. In this connection Funding Recipient shall:

(i) file or cause to be filed with the appropriate office of the New York State Department of State a Uniform Commercial Code Financing Statement Form UCC-1 with respect to such Eligible Equipment and other Collateral showing The City of New York, Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101 as Secured Party and Funding Recipient as Debtor; and

(ii) file or cause to be filed with the appropriate office of the New York State Department of State such Uniform Commercial Code Financing Statements Form UCC-3 as may be required to terminate any competing Liens on such Eligible Equipment and other Collateral.

Funding Recipient shall be deemed to have complied with the foregoing requirements by delivering the filing acknowledgements of the requisite Uniform Commercial Code Financing Statements together with copies thereof bearing the recording information to New York City Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101, Attention: Bruce Rudolph.

(e) Organizational Documents. A true copy of Funding Recipient's certificate of incorporation or other organizational document filed with the State of New York, evidencing Funding Recipient's status as a New York not-for-profit corporation.

(f) Opinion of Counsel. An opinion of counsel to Funding Recipient substantially in the form of Exhibit D.

(g) Tax Affirmation. A Tax Affirmation in the form of Exhibit F executed by the Chief Executive Officer of Funding Recipient.

Section 5.02. Additional Required Documents. At least thirty (30) Business Days prior to the date on which Funding Recipient seeks a disbursement of the Funding, Funding Recipient shall submit to the City each of the following documents, and the receipt and approval by the City of each such document shall be a condition to the disbursement of the Funding:

(a) Requisition. A requisition ("**Requisition**") in a form to be provided by the City.

(b) Procurement Affirmation. A Procurement Affirmation in the form of Exhibit C hereto executed by the Chief Executive Officer of Funding Recipient.

(c) Additional Information. Such additional documents and information reasonably requested by the City with respect to the Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding or in support of the Requisition, including without limitation: (1) documents that would customarily be required by lenders and other participants in transactions for the finance and/or purchase of machinery and equipment; and (2) statements identifying payments, if any, made to Affiliates.

Section 5.03. Frequency and Location of Disbursements of the Funding. Disbursements of the Funding shall be made no more frequently than once every thirty (30) days and shall be made at the principal office of DDC, or at such other place as the City may

designate.

Section 5.04. Requisitions Renew Funding Recipient's Representations. Funding Recipient agrees that each Requisition presented to the City shall constitute a representation, warranty and agreement that: (a) all of the representations and warranties made by Funding Recipient in this Agreement and the Security Agreement remain true, complete and correct on the date of such Requisition; (b) no Default in any of the terms, covenants or conditions on the part of Funding Recipient to perform or observe under this Agreement, the Security Agreement and any other of the Transactional Documents has occurred and is continuing; and (c) Funding Recipient's certificate of incorporation has not been amended and Funding Recipient remains in good standing as a New York not-for-profit corporation.

Section 5.05. Submission of Requisitions. All Requisitions shall be directed to Bruce Rudolph, New York City Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101 or to such other Person as the City may instruct Funding Recipient.

Section 5.06. Funding Recipient's Representative. Funding Recipient hereby appoints \_\_\_\_\_ as its agent and representative to represent Funding Recipient in connection with this Agreement.

## ARTICLE 6

### OPERATION, LOCATION AND LABELING OF EQUIPMENT

Section 6.01. Operation of Equipment. The Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding shall be used and operated by Funding Recipient only in the ordinary conduct of its business by qualified employees, servants, and agents of Funding Recipient and in accordance with all applicable operating instructions and applicable Requirements.

Section 6.02. Location of Equipment. The Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding shall be located at the Premises at all times during the Performance Term. Notwithstanding the foregoing, any Equipment may be temporarily moved from the Premises for maintenance or repair.

Section 6.03. Labels on Equipment. Promptly, upon acquisition thereof, Funding Recipient shall prominently affix a label to each item of City-funded Equipment stating as follows:

- Financed By: The City of New York and Subject to a First Priority Lien in its Favor.

Funding Recipient shall not remove said label or permit that it be removed until expiration of the Performance Term.

## ARTICLE 7

### MAINTENANCE; ALTERATIONS; NO VIOLATIONS OF INSURANCE AND WARRANTY REQUIREMENTS

Section 7.01. Maintenance of Equipment. Funding Recipient, at its sole cost and expense, shall keep the Eligible Equipment paid for with the proceeds of the Funding in good condition and working order, ordinary wear and tear from proper use excepted, and shall make all necessary adjustments, repairs and replacements, thereto.

Section 7.02. Alterations. Funding Recipient shall not make any alterations, additions or improvements to the Eligible Equipment paid for with the proceeds of the Funding except as may be required pursuant to this Article without the City's prior written consent unless such alterations, additions or improvements do not impair the commercial value or the originally intended function or use of such Equipment.

Section 7.03. No Violations of Insurance and Warranty Requirements. Funding Recipient shall not violate any insurance or warranty requirements with respect to the Eligible Equipment paid for with the proceeds of the Funding.

[No additional text on this page.]

## ARTICLE 8

### CERTAIN REPRESENTATIONS AND WARRANTIES OF FUNDING RECIPIENT

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

Section 8.01. Organization and Good Standing. Funding Recipient is a not-for-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of New York and has all requisite power, authority to own its assets and to carry on the business as now conducted, and is duly qualified and authorized to do business as a foreign corporation and in good standing under the laws of each other jurisdiction in which the conduct of its business requires such qualification or authorization.

Section 8.02. Corporate Power and Authority; Due Authorization. The execution, delivery and performance by Funding Recipient of this Agreement and the Security Agreement have been duly authorized by all necessary corporate action and do not and will not: (a) require any consent or approval of its stockholders; (b) contravene its charter or by-laws; (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; (d) result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Funding Recipient is a party or by which it or its properties may be bound or affected; (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by Funding Recipient; or (f) cause Funding Recipient to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

Section 8.03. Legally Enforceable Agreements. Each of this Agreement and the Security Agreement is a legal, valid and binding obligation of Funding Recipient enforceable against Funding Recipient in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

Section 8.04. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Funding Recipient, threatened against, or affecting Funding Recipient before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of Funding Recipient, or the ability of Funding Recipient to perform its obligations under this Agreement.

Section 8.05. 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 8.06. 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 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 Requirements.

Section 8.07. Integrity and Responsibility. Neither Funding Recipient nor any Person that is a 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 written 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 8.08. No Liens on the Equipment and other Collateral. There are no Liens on any item of Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding or other Collateral pledged by Funding Recipient to the City as security for the terms, covenants and conditions on Funding Recipient's part to be performed and/or observed under the Transactional Documents.

Section 8.09. Eligible Equipment. Each and every item of Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding constitutes Eligible Equipment.

Section 8.10. Information Submitted to the City. All information submitted to the City by Funding Recipient in connection with the Funding is complete and correct and fairly presents the condition, operations and prospects of Funding Recipient as of the date of each submission. Funding Recipient has not misstated, omitted or withheld any 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, document and instrument submitted to the City by Funding Recipient in connection with the Funding is complete and genuine and accurately reflect the transaction to which it relates.

Section 8.11. Procurement of Agreement. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Funding Recipient further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the Parties.

Section 8.12. No Representations by the City. No representations, warranties or statements, express or implied, have been made by or on behalf of the City with respect to the fitness of the Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding for the use contemplated by this Agreement or the Requirements applicable to the such eligible Equipment, and Funding Recipient has relied on no such representations, warranties or statements, in its determination to enter into this Agreement and assume its obligations hereunder.

## ARTICLE 9

### CERTAIN ADDITIONAL COVENANTS

Section 9.01. The Security Agreement. Funding Recipient shall perform and observe all terms, covenants and conditions on its part to be performed and/or observed under the Security Agreement.

Section 9.02. City Purpose Covenant. Funding Recipient shall make use of each item of Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding for a period of five (5) years from the later of the date hereof and the date each such item of Eligible Equipment is received by Funding Recipient (the “**Performance Term**”) to provide the following City services, and shall make such services generally available to City inhabitants on a not for profit basis: [Note: SPECIFY SERVICE BEING PROVIDED – THIS IS DIFFERENT FOR EACH ORGANIZATION]. For the duration of the Performance Term Funding Recipient shall take all actions necessary to ensure that such Eligible Equipment is used solely in accordance with the foregoing requirements, and shall not transfer ownership or control (by sale, lease or any other means) of any such Eligible Equipment to any Person, without the City’s prior written consent. (The obligations contained in this Section shall be referred to as the “**City Purpose Covenant**”). The Funding Recipient agrees to use the Eligible Equipment during standard business hours at least five (5) days a week from 9:00am to 5:00pm. [Note: Verify amount of use based on information provided in the Funding Recipient’s Application. The agency may only revise this requirement on a case-by-case basis.] The provisions of this Section shall survive the expiration or earlier termination of this Agreement, but will expire upon expiration of the Performance Term.

Section 9.03. Due Application of Funding Proceeds. Funding Recipient shall dedicate the proceeds of the Funding exclusively to reimburse itself for Eligible Costs incurred and paid by it for the purchase of Eligible Equipment in accordance with the terms of this Agreement and shall not use any part of the same for any other purpose.

Section 9.04. No Discrimination: Sectarian Uses; Beneficiaries of Services.

a. Sectarian Uses. City-Funded Equipment shall not be used to advance or support sectarian activity, including religious worship, instruction or proselytizing. Notwithstanding the preceding, subject to the requirements of the City Purpose Covenant, any City-Funded Equipment may be made available to any Person, including Funding Recipient itself, on a neutral, non-discriminatory basis for any religious or nonreligious purposes or activities, provided that such City-Funded Equipment is generally made available to the general public for

such purposes or activities on substantially similar terms and conditions, the availability of such City-Funded Equipment for such purposes or activities on such terms and conditions is made known to the general public, and the use of such City-Funded Equipment for any such purposes or activities is occasional and temporary.

b. Beneficiaries of Services. Funding Recipient understands and agrees that it has represented to the City that it would not deny the benefits of its services to any person based on race, religion, creed, color, national origin, sex, age, disability, marital status, sexual orientation or a political affiliation. Funding Recipient further understands and agrees that its representation that it would make its services available to the people of New York on a non-discriminatory basis was a material consideration in the City's determination to make the Funding available to Funding Recipient, and that Funding Recipient's failure to make its services available on a non-discriminatory basis as represented to the City would constitute an Event of Default. [Note: IF FOR ANY REASON SERVICES ARE NOT OR CANNOT BE MADE AVAILABLE ON A NON-DISCRIMINATORY BASIS, CONSULT WITH OMB.]

Section 9.05. Obligation to Comply with Requirements. Funding Recipient shall comply with all Requirements applicable to the use and operation of the Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding and Funding Recipient's performance of its obligations hereunder.

Section 9.06. Maintenance of Existence. Funding Recipient shall preserve and maintain its corporate existence as a not-for-profit corporation and remain in good standing in the jurisdiction of its incorporation, and qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is required.

Section 9.07. Maintenance of Office and Properties. Funding Recipient shall maintain an office in the City of New York where notices with respect to this Agreement may be delivered to it and inspections and audits in accordance with Section 10.02 may be conducted. Funding Recipient shall maintain, keep and preserve, all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 9.08. Transactions with Affiliates. Funding Recipient shall not enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of Funding Recipient's business and upon fair and reasonable terms no less favorable to Funding Recipient than would obtain in a comparable arm's length transaction with a Person who is not an Affiliate.

Section 9.09. Maintenance of and Compliance with Insurance Requirements. Funding Recipient shall maintain or cause to be maintained at Funding Recipient's expense the insurance coverage referred to in Exhibit B hereto. Funding Recipient shall comply with all of the applicable provisions of such insurance policies. Funding Recipient will promptly furnish the City with copies of any notice of default received by it under any of the insurance policies referred to in this Section. Nothing contained in this Section is intended to confer any rights upon any third party.

Section 9.10. Other Information. Funding Recipient shall furnish and cause to be furnished to the City such other information respecting the Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding as the City may reasonably request from time to time.

Section 9.11. Assignment. Funding Recipient's rights and obligations under this Agreement shall not be pledged, transferred or assigned without the prior written consent of the City.

Section 9.12. Liens. Funding Recipient shall not create, permit or suffer to exist any Liens against any of the Funding. In addition, Funding Recipient shall not create, permit or suffer to exist any Liens against any item of Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding or against other Collateral pledged by Funding Recipient to the City as security for the terms, covenants and conditions on Funding Recipient's part to be performed and/or observed under the Transactional Documents.

Section 9.13. Evidence of Title. Funding Recipient shall deliver to the City, on demand, certified copies of any contracts, bills of sale, statements, receipted vouchers or agreements, under which Funding Recipient claims title to any Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding.

Section 9.14. Conflict of Interests. No public official, servant or employee of the City, or any of their respective designees, consultants or agents, no member of the governing body of the City and no public official of the City who exercises or exercised any functions or responsibilities with respect to the subject matter of this Agreement during his/her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed, services to be rendered or goods to be purchased in connection with the acquisition or operation of Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding or in any activity or benefit arising out of or in connection with the acquisition or operation of such Eligible Equipment. Upon receiving notice or having knowledge of any such prohibited interest, Funding Recipient immediately shall advise the City thereof and shall use its best efforts to terminate such prohibited interest. Funding Recipient shall require each of its vendors, contractors and subcontractors who may be paid in whole or in part with the proceeds of the Funding to warrant and represent in writing for themselves, and on behalf of their principals, employees and agents that there exist no conflict of interests prohibited under this Section, and to covenant to terminate any such prohibited interest immediately, upon demand by Funding Recipient.

Section 9.15. No Personal Liability. No Person authorized to act on behalf of the City shall be charged personally with any liability, or held personally liable in connection with the purchase, installation and operation of Equipment, this Agreement or any breach or attempted or alleged breach thereof. This provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 9.16. Equal Opportunity and Affirmative Action. Funding Recipient shall comply with the applicable provisions of City and State of New York Requirements related to equal opportunity and affirmative action applicable to non-construction contractors, certain of

which are set forth in the “Supply and Service Rider” attached hereto to and made a part hereof as **Exhibit E**. In addition, Funding Recipient shall submit to the City certain employment reports relative to the requirements of **Exhibit E** in a form prescribed by the City.

## ARTICLE 10

### BOOKS AND RECORDS, INSPECTIONS AND AUDIT

Section 10.01. Maintenance of Books and Records. Funding Recipient shall keep and maintain at the Premises complete and accurate books and records regarding the Funding, the acquisition of Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding and the other matters contemplated by this Agreement and the Security Agreement, and Funding Recipient shall preserve such records for a period of at least six (6) years. However, if, at the expiration of such six (6) year period, the City is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Funding Recipient shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

Section 10.02. Inspection and Audits of Books and Records. The City, its officials, employees, designees, consultants and agents, including, without limitation, the Comptroller shall have the right from time to time during regular business hours, upon forty-eight (48) hours notice, to inspect and audit Funding Recipient's books and records, and all other papers and files of Funding Recipient, relating in any manner to the Funding or Funding Recipient's compliance with the terms, covenants and conditions of this Agreement, the Security Agreement or any other agreement related to Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding. Funding Recipient shall produce all such books, records, papers and files, upon request, for inspection at the Premises. Subject to applicable law, all information obtained from Funding Recipient's books, records, papers and files shall be held in confidence, except as may be necessary for the enforcement of the City's rights under this Agreement.

Section 10.03. Inspections of the Equipment. Funding Recipient shall permit the City, its officials, employees, designees, consultants and agents, including, without limitation, the Comptroller, to inspect the Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding, from time to time, during normal business hours as the City deems necessary to determine compliance with the terms, covenants and conditions of this Agreement. The omission or failure of the City or any of its representative to make such inspections, or to advise Funding Recipient of its failure to comply with any of the terms, covenants or conditions of this Agreement, shall not relieve Funding Recipient of its obligations under this Agreement or impose any liability upon the City.

Section 10.04. Survival. The obligations of Funding Recipient under this Article shall survive the expiration of the Term.

## ARTICLE 11

### LIMITATION ON LIABILITY; RELEASE

Section 11.01. Limited Liability of the City. The City shall not be liable to Funding Recipient, any vendor or any other Person for any matter arising out of or in connection with the acquisition, delivery, installation and operation of Eligible Equipment paid for or

intended to be paid for with the proceeds of the Funding, except for the failure to make disbursements of the Funding to Funding Recipient in accordance with the terms of this Agreement. In furtherance of the foregoing, 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 remedy available to Funding Recipient or any other Person claiming damage by reason of the City's failure to make such disbursement shall be to obtain the requisite disbursement from the City. In no event shall the City be liable for any other damages and/or costs and expenses, including, without limitation, consequential damages and attorneys' fees, due to any such failure.

Section 11.02. Release. Funding Recipient hereby releases the City from all claims at any time arising in connection with this Funding Agreement, the Security Agreement and/or any of the other Transactional Documents, the purchase, installation and/or use of Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding and/or any actions taken or omitted to be taken by the City with respect to any of the foregoing.

## ARTICLE 12

### INDEMNIFICATION

Section 12.01. Obligation to Indemnify. Funding Recipient shall defend, indemnify and save the City, 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, court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of, or in connection with, any of the matters contemplated by this Agreement, including, without limitation, any of the following contingencies, except that no Indemnitee shall be so indemnified and saved harmless to the extent that such liabilities, etc., are caused by the gross negligence or intentional misconduct of such Indemnitee:

(a) Acts or Failure to Act of Funding Recipient. Any act or failure to act on the part of Funding Recipient or any of its respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees.

(b) Accidents, Injury, damage or Loss to Person or Property. Any accident, bodily injury (including death at any time resulting therefrom), damage or loss to any person or property occurring in connection with the use and operation of the Equipment.

(c) Lien or Claim Against Equipment. Any Lien or claim that may be alleged to have been imposed or arisen against or on Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding, or any Lien or claim created or permitted to be created by Funding Recipient or any of its partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, the City, or any liability that may be asserted against the City with respect thereto.

(d) Default of Funding Recipient. Any failure on the part of Funding Recipient to keep, observe and perform any of the terms, covenants or conditions on Funding Recipient's part to be kept, observed or performed under this Agreement, the Security Agreement and/or any other of the Transactional Documents.

Section 12.02. Contractual Liability. The obligations of Funding Recipient under this Article 12 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 insurance policies affecting the Equipment.

Section 12.03. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees in connection with any event referred to in Section 12.01 hereof, 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 each Indemnitee 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 12.04. Notification and Payment. Promptly, upon having actual knowledge thereof, an Indemnitee shall notify Funding Recipient of any cost, liability or expense incurred by, asserted against, or imposed on, such Indemnitee, as to which cost, liability or expense Funding Recipient has agreed to indemnify such Indemnitee pursuant to Section 12.01. Funding Recipient agrees to pay such Indemnitee all amounts due under this Article 12 within fifteen (15) business days after the City's request therefor.

Section 12.05. Survival. The provisions of this Article 12 shall survive the expiration or earlier termination of this Agreement.

## ARTICLE 13

### CONSENTS AND APPROVALS

Section 13.01. Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals, which 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.

Section 13.02. Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by the City or Funding Recipient is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a



final determination 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 13.03. No Unreasonable Delay; Reasonable Satisfaction; Discretion. Wherever this Agreement provides that the City's or Funding Recipient's consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed. Any matter required to be done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party. Unless specifically stated otherwise, all consents required of the City under this Agreement shall be granted in the City's sole discretion, and once granted, may be subject to such conditions as the City may impose in its sole reasonable discretion.

## ARTICLE 14

### INVESTIGATIONS; REFUSAL TO TESTIFY

Section 14.01. Cooperation. Funding Recipient shall cooperate fully with any investigation, audit, or inquiry conducted by a New York State or City Governmental Authority 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 Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, permit, lease or license that is the subject of the investigation, audit or inquiry.

#### Section 14.02. Hearings.

(a) If any person 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 and still refuses to testify before a grand jury or other Governmental Authority 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 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; or

(b) 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 Governmental 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 Authority that is a party in interest in, and is seeking testimony concerning the award of, or the 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, the Commissioner of the Department of Design and Construction (“**Commissioner**”) or the agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license may 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.

Section 14.03. Adjournments of Hearing, Etc. If any non-governmental party to the hearing requests an adjournment, the Commissioner or the agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 14.05 below without the City incurring any penalty or damages for delay or otherwise.

Section 14.04. Penalties. The penalties that may attach after the final determination by the Commissioner or agency head may include, but shall not exceed:

(a) the disqualification for a period not to exceed five (5) years from the date of any adverse determination for any Person or any entity of which such Person was a member, shareholder, officer, director, employee or agent 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

(b) the cancellation or termination of any and all 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.

Section 14.05. Criteria for Determination. The Commissioner or agency head shall consider or address in reaching his or her other determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below, in addition to any other information, which may be relevant and appropriate.

(a) 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) 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.

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

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in a party or entity subject to penalties under Section 14.04 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 Section 14.02 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 adverse impact such a penalty would have on such person or entity.

Section 14.06. Definitions. For the purposes of this Article 14, the following terms will have the meanings set forth below. Capitalized terms utilized, but not otherwise defined below, will have the meanings assigned to such terms elsewhere in this Agreement.

(a) 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) 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.

(c) 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.

(d) The term “**member**” as used herein shall be defined as any person associated with any other person or entity as a partner, director, officer, principal or employee.

Section 14.07. Failure to Report Solicitations. In addition to, and notwithstanding any other provision of this Agreement, the Commissioner or the agency head may, at his or her discretion, terminate this Agreement upon twenty-four (24) hours’ 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 purchase of the Equipment or obtaining of this Agreement by Funding Recipient, or affecting the performance of this Agreement.

## ARTICLE 15

### EVENTS OF DEFAULT AND CERTAIN REMEDIES

Section 15.01. Events of Default. Each of the following shall constitute an event of Default (“**Event of Default**”):

(a) Funding Recipient shall have used or applied all or any portion of the Funding in violation of any 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 the City Purpose Covenant and any of the terms, covenants and conditions that pertain to the permitted uses of the Funding) and such failure continues for ten (10) 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 ten (10) 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 ten (10) 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 observe pursuant to the Security Agreement and such failure continues for ten (10) Business Days after written notice to Funding Recipient specifying such Default.

(e) Funding Recipient shall fail to perform or observe any of the terms, covenants or conditions on its part to be performed or observe under any of the Transactional Documents (other than the Security Agreement) and such failure continues for ten (10) Business Days after written notice to Funding Recipient specifying such Default.

(f) Any representation or warranty made or deemed made by Funding Recipient in this Agreement or the Security Agreement or any other of the Transactional Documents shall be false, incomplete or misleading as of when made or deemed made.

(g) To the extent permitted by law, if Funding Recipient shall admit in writing that it is unable to pay its debts as such become due, or if Funding Recipient shall make an assignment for the benefit of creditors, or to the extent permitted by law, if Funding Recipient shall 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, or if Funding Recipient shall 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, or 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, or of the Premises or any interest of Funding Recipient therein, or if Funding Recipient shall take any partnership or corporate action in furtherance of any action described in this Section.

(h) 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, or of the Premises 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.

(i) 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 15.02. Certain Remedies. Upon the occurrence of an Event of Default, the City may exercise any right, power or remedy permitted to it by law or in equity, under this Agreement and/or the Security Agreement, including, without limitation:

(a) the right to terminate this Agreement, immediately upon notice to Funding Recipient (reserving, however, all remedies provided in this Article 15, under the Security Agreement, 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) the right to obtain restitution of any portion of the Funding that was used or applied in violation of any of the terms, covenants or conditions of this Agreement with interest from the date of the City's disbursement thereof at the Late Charge Rate;

(c) the right to take possession of Eligible Equipment paid for with the proceeds of the Funding and other Collateral pledged by Funding Recipient to the City as security for the obligations of Funding Recipient under the Transactional Documents; and

(d) the right to enforce Funding Recipient's obligations under this Agreement administratively or by equitable remedies of specific performance, declaratory judgment or injunction.

Section 15.03. Remedies Not Exclusive. No right or remedy conferred upon the City in this Agreement is intended to be exclusive of any other right or remedy contained in this Agreement. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Agreement or now or hereafter available to the City at law, in equity, by statute or otherwise.

Section 15.04. Survival. The provisions of Section 15.02 hereof shall survive the expiration or earlier termination of this Agreement.

## ARTICLE 16

### NOTICES

Section 16.01. Notices. All notices and communication to the Parties hereunder will be 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: (a) upon receipt, if hand delivered; (b) five days from the date of mailing, if mailed; or (c) the next Business Day after delivery 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 must be delivered to the following addresses and addressees or to such other addresses or addressees as the City may notify Funding Recipient from time to time:

**Title:** Bruce Rudolph  
**Address:** New York City Department of Design and Construction  
30-30 Thomson Avenue  
Long Island City, New York 11101

with a copy to:

**Title:** General Counsel  
**Address:** New York City Department of Design and Construction  
30-30 Thomson Avenue  
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) as Funding Recipient may notify the City from time to time:

**Title:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_, New York \_\_\_\_\_

## ARTICLE 17

### CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

Section 17.01. 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 Security Agreement, any of the other Transactional Documents, the relationship of the City and Funding Recipient, Funding Recipient's use and operation of the Equipment, and/or any claim for injury or damages.

Section 17.02. Jurisdiction. Any and all claims asserted by or against the City arising under this Agreement, the Security Agreement, any of the other Transactional Documents, 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 New York State Court, Funding Recipient hereby expressly 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 expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

(c) Funding Recipient agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) 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.

(e) 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.

Section 17.03. Process. Funding Recipient irrevocably consents to the service of any and all process in any action or proceeding instituted against Funding Recipient by the mailing of copies of such process to Funding Recipient at its address, and in the manner, set forth in Article 16 hereof. Nothing in this Section shall affect the right of the City to serve legal process in any other manner permitted by law.

## ARTICLE 18

### MISCELLANEOUS

Section 18.01. 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 18.02. 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 18.03. Amendments; Waiver. This Agreement may not be amended except by an instrument in writing signed by both parties. The failure by either party to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

Section 18.04. Entire Agreement. This Agreement and the Security Agreement contain all of the promises, agreements, conditions, inducements and understandings between the City and Funding Recipient concerning the Funding and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the Funding other than as expressly set forth herein or therein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith or hereafter by the parties hereto.

Section 18.05. Gender, Etc. The gender used in this Agreement shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the Persons being referred to may require. The singular shall include the plural and vice versa as the context may dictate.

Section 18.06. 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 18.07. No Agency, Partnership or Joint Venture.

(a) Neither Funding Recipient nor any of its employees, contractors or subcontractors is, shall be or shall represent that he, she or it is an agent, servant or employee of the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or authorization given by the City or any of its officials, employees or agents. Funding Recipient shall be solely responsible for the work, direction, compensation and personal conduct of its officers, agents, employees, contractors and subcontractors.

(b) 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 shall not be deemed partners or co-venturers for any purpose.

Section 18.08. 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.

Section 18.09. 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, except as otherwise provided herein, their respective successors and assigns.

Section 18.10. 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 18.11. Counterparts. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

THE CITY OF NEW YORK, acting by and through its DEPARTMENT OF DESIGN AND CONSTRUCTION

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY

\_\_\_\_\_  
Acting Corporation Counsel

[FUNDING RECIPIENT]

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK        )  
  SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK        )  
  SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

EXHIBIT A

BUDGET

(SEPARATE ATTACHMENT)

EXHIBIT B

INSURANCE REQUIREMENTS

(SEPARATE ATTACHMENT)

## INSURANCE REQUIREMENTS

A. Insurance Requirements. From and after the date hereof until expiration of the Performance Term, Funding Recipient, at its sole cost and expense, shall carry and maintain (or cause to be carried and maintained) in full force and effect insurance coverage of the following types, in the minimum limits and for the periods set forth below, and shall otherwise comply with the requirements of this Exhibit. Unless the context otherwise requires, defined terms utilized and not otherwise defined herein shall have the meanings assigned to such term in the Agreement to which this Exhibit is attached and made a part of:

(1) Commercial General Liability Insurance. At all times during the Term, Funding Recipient shall carry and maintain Commercial General Liability insurance, written on an “occurrence” basis and not on a “claims made” basis, protecting against all liability with respect to the performance by Funding Recipient of its obligations hereunder, the use of the Equipment and the Premises and the operations related thereto, whether conducted on or off the Premises, for bodily injury, death, personal injury and property damage, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for any policy year, and designating Funding Recipient as “named insured” and the City as “additional insureds.” If during any year, it appears that the amount of liability resulting from insured occurrences may exceed any annual aggregate applicable to the insurance required by this subsection, Funding Recipient shall procure and maintain for the remainder of such year insurance against future-arising claims that satisfy the requirements of this subsection in all respects, including required amounts. Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (10/01 ed.). Without limiting the generality of the foregoing the Commercial General Liability Insurance required hereby shall include the following coverages and clauses:

- (a) Products Liability/Completed Operations Coverage;
- (b) blanket Contractual Liability insurance (including, without limitation, the tort liability of another assumed in a contract) covering written and oral contractual liability, and specifically covering Funding Recipient’s indemnification obligations under this Agreement;
- (c) Medical Payments (or equivalent coverage);
- (d) Personal Injury (contractual exclusion related to the extent commercially available);
- (e) a notice of occurrence clause;
- (f) to the extent available on a commercially reasonable basis a thirty (30) day notice of cancellation or non-renewal clause, specifically requiring notice of cancellation or non-renewal clause, specifically requiring notice or cancellation or non-renewal for non-payment of premium, and for any material reduction in coverage.
- (h) an unintentional errors and omissions clause;

- (i) Extended Bodily Injury coverage;
- (j) contain no exclusion for Water Damage or Sprinkler Leakage Legal Liability or any other hazard customarily covered by such insurance;
- (k) contain no cross liability exclusion and no other exclusion which is not contained in ISO Form CG 001 (10/93) or successor thereto, unless approved in writing by the City;
- (l) contain a provision that the policy cannot limit or exclude coverage with respect to any contractors utilized by Funding Recipient;
- (m) contain the “subcontractor exception” to the “your work” exclusion; and
- (n) contain no deductibles except those specifically approved in each instance by the City and such deductions as may be reasonable and customary in similar policies covering similar risks.

(2) Business Property Insurance with Respect to the Equipment. Insurance protecting Funding Recipient and the City against loss of or damage to the Eligible Equipment paid for or intended to be paid for with the proceeds of the Funding by fire and all other risks of physical loss or damage now or hereafter embraced by extended coverage and an “All-Risk” endorsement in the broadest form available, in the amount of the full replacement value of such Eligible Equipment (without depreciation or obsolescence clause). Such insurance shall designate the City as loss payee and shall include the following coverages and clauses:

- (i) a deductible of not more than One Thousand Dollars (\$1,000) per loss;
- (ii) an agreed or stipulated amount endorsement negating any co-insurance requirements;
- (iii) containing no exclusion unless approved in writing by the City, which approval shall not be unreasonably withheld.

(3) Statutory Coverages

(a) Workers’ Compensation Insurance and Disability Benefits Insurance. At all times during the Term, Funding Recipient shall carry and maintain Statutory Workers’ Compensation, and New York Disability Benefits Insurance in statutorily required amounts, as required by applicable law, and any other insurance required by law covering all persons employed by Funding Recipient.

(b) Employers’ Liability Insurance. At all times during the Term, Funding Recipient shall carry and maintain Employers’ Liability Insurance in statutorily required amounts affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his/her employment in connection with the performance by Funding Recipient of its obligations under this Agreement.

B. Treatment of Proceeds.

(1) Proceeds of Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to the City to be held for the purpose of paying for the cost of replacing the Equipment paid for or intended to be paid for with the proceeds of the Funding. The City shall have no liability with regard to any proceeds received by it and paid or retained in good faith and in accordance with the provisions of this Agreement. If Funding Recipient believes that the City has not applied the insurance proceeds in accordance with this Agreement, Funding Recipient's sole remedy shall be to bring an action to have the proceeds applied in accordance with this Agreement.

(2) Cooperation in Collection of Proceeds. Funding Recipient and the City shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Funding Recipient and the City shall execute and deliver such proofs of loss and other instruments as may be required of Funding Recipient or the City, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

C. General Requirements Applicable to Policies.

(1) Insurance Companies. All of the insurance policies required by this Exhibit shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A-VII" or better and a claims paying ability of "AA" (or its equivalent) or better by at least two (2) nationally recognized rating agencies acceptable to the City in all respects, one of which shall be Standard and Poor's Ratings Services, Inc.

(2) Term. Funding Recipient shall procure policies for all insurance required by this Agreement for periods of not less than one (1) year and shall procure renewals thereof from time to time at least thirty (30) days before the expiration thereof.

(3) Waiver of Subrogation. All policies of insurance required under this Agreement (except for the Statutory Coverages required by Section A(3) hereof) shall include a waiver of the right of subrogation with respect to all the named insureds and additional insureds.

(4) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions hereof shall contain the following provisions and agreements.

(a) A provision that no act or omission of Funding Recipient, including, without limitation, any use of the Equipment paid for or intended to be paid for, with the proceeds of the Funding for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by the City.

(b) The Duties In the Event of Occurrence, Claim or Suit condition of the Commercial General Liability insurance policy required by this Exhibit shall provide that if and insofar as knowledge of an "occurrence," "claim," or "suit" is relevant to the

City as additional insured under the policy, such knowledge by an agent, servant official, or employee of the City will not be considered knowledge on the part of the City of the “occurrence,” “claim,” or “suit” unless the Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department shall have actual notice thereof.

(c) To the extent available on a commercially reasonable basis, an agreement by the insurer that such policy shall not be cancelled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days’ prior written notice to the City, including, without limitation, cancellation or non-renewal for non-payment of premium.

(d) A provision that notice of accident or claim to the insurer by Funding Recipient and/or the City shall be deemed notice by all insureds under the policy. Notices from the insurer to the City shall be 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. All notices and correspondences from the insurer to the City must be delivered to the following addresses or to such other addresses as the City may notify the insurer of from time to time:

Department of Design and Construction  
30-30 Thomson Avenue  
Long Island City, New York 11101  
Attention: General Counsel

(5) Primary Protection. All insurance policies required by this Exhibit shall be primary protection. The City shall not be called upon to contribute to any loss.

(6) Adjustments for Claims. All property insurance policies required by this Exhibit shall provide that all adjustments for claims with the insurers shall be made by the City. All other insurance policies required hereby shall provide that all adjustments for claims with the insurers be made with both the City and Funding Recipient, both of which shall act reasonably.

D. Evidence of Insurance. Prior to the commencement of the Term and prior to the expiration of any of the policies to be maintained or caused to be maintained by Funding Recipient, Funding Recipient shall deliver or cause to be delivered to the City certificates of insurance for such policies, in form reasonably satisfactory to the City. At the City’s request Funding Recipient shall deliver a copy of each entire original policy required hereby.

E. Compliance with Policy Requirements. Funding Recipient shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required hereby. Funding Recipient shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies, and shall give, and shall cause its contractors to give, the insurer and the City notice of all claims, accidents and losses promptly, but in any event no later than five (5) Business Days after Funding Recipient, or any of its contractors, as the case may be, acquires actual knowledge of the same.



F. Separate Insurance. Funding Recipient shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Agreement to be furnished by Funding Recipient unless the City is included therein as additional insured and loss payee, as the case may be, with respect to such insurance. Funding Recipient shall immediately notify the City that it carries any such separate insurance and shall cause copies of the policies thereof to be delivered to the City.

G. Increases in Coverage and Additional Insurance. The City shall have the right, at any time and from time to time, to modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required hereby to conform such requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of equipment comparable to Equipment paid for or intended to be paid for with the proceeds of the Funding, or are commonly carried by businesses of the size and nature of the business conducted at the Premises. From time to time, the City may require Funding Recipient to increase or cause to be increased the amount of coverage provided under the policies of insurance required hereunder, or change the types of insurance required hereunder, provided that in any such event, unless the City reasonably demonstrates the need for such increase of coverage, the amount of any such increased coverage shall not exceed the amount of similar coverage that are commonly carried in connection with similar businesses.

H. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Funding Recipient hereunder shall not constitute a representation or warranty by the City that such insurance is in any respect adequate.

I. Blanket and/or Master Policies; Primary and Excess Policies.

(1) Blanket Policies. The insurance required by the provisions of this Exhibit may, at Funding Recipient's option, be effected by blanket and/or umbrella policies issued to Funding Recipient covering the Equipment paid for or intended to be paid for with the proceeds of the Funding and other properties owned or leased by Funding Recipient, provided such policies otherwise comply with the provisions of this Agreement and allocate to such Equipment the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as "named insureds" or "additional insureds" hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Agreement shall be effected by any such blanket or umbrella policies, Funding Recipient shall furnish to the City certified copies of such policies together with schedules annexed thereto setting forth the amount of insurance applicable to such Equipment and proof reasonably satisfactory to the City that the premiums for at least the first year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

(2) Primary and Excess Policies. The liability insurance required to be carried by Funding Recipient pursuant to this Exhibit may, at the option of Funding Recipient, be effected through any combination of layers of primary and excess coverages, provided that such policies otherwise comply with the provisions of this Exhibit and afford the amounts of coverage required by this Exhibit for all insureds required to be named as insureds hereunder.

J. Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than Two Million Dollars (\$2,000,000) or two (2) times the per occurrence limit required for such insurance, whichever is greater.

K. Other Insurance Not Required under this Agreement. Funding Recipient may effect for its own account any insurance not required under the provisions of this Agreement, provided same shall not directly or indirectly result in a diminution of the insurance coverage specified in Section A hereof. If any such insurance, as permitted above, shall affect the City's insurance coverage, prior to purchase thereof Funding Recipient shall provide a copy of the policy to the City for its approval.

L. Modification by Insurer. Without limiting any of Funding Recipient's obligations or the City's rights under this Exhibit, in the event that an insurer modifies, in any material respect, any insurance policy that Funding Recipient is required to maintain in accordance with this Agreement, Funding Recipient shall give notice to the City of such modification within thirty (30) days after Funding Recipient's receipt of notice thereof.

M. Interpretation. All insurance terms used in this Exhibit shall have the meanings ascribed by the Insurance Services Offices.

EXHIBIT C

PROCUREMENT AFFIRMATION

(SEPARATE ATTACHMENT)

PROCUREMENT AFFIRMATION

New York City Department of Design and Construction

[FUNDING RECIPIENT]

Address:

Contract dated \_\_\_\_\_, for Eligible Equipment to be used

\_\_\_\_\_.

Eligible Equipment Purchased And Purpose Therefor	Date of Purchase	Cost of Equipment	Eligible Vendor

Funding Recipient hereby certifies that the items of Eligible Equipment listed above have been received and installed on the Premises and are paid in full. Funding Recipient hereby further certifies that attached hereto are true and complete copies of invoices/receipts and purchase orders for each of the items of Eligible Equipment listed above in each case marked “paid in full” by the corresponding Eligible Vendor. Terms used but not defined herein shall have the meaning assigned to such terms in the Funding Agreement dated as of \_\_\_\_\_, 20\_\_ between the City of New York and the undersigned.

[NAME OF FUNDING RECIPIENT]

By: \_\_\_\_\_

Name:

Title:

EXHIBIT D

OPINION OF COUNSEL

(SEPARATE ATTACHMENT)

, 20\_\_

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 (the “**Agreement**”) dated as of \_\_\_\_\_, 20\_\_  
between The City of New York (the “**City**”), acting by and through its  
Department of Design and Construction, and \_\_\_\_\_  
(the “**Company**”), and Security Agreement (“**Security Agreement**”) dated as of \_\_\_\_\_, 20\_\_ by the Company in favor of the City.

Ladies and Gentlemen:

We have acted as counsel for the Company, a New York not-for-profit corporation, in connection with the Agreement and the Security Agreement, and related agreements and transactions.

In so acting, we have been asked to render an opinion in connection with the execution and delivery by the Company of the Agreement, the Security Agreement and related agreements and transactions.

In delivering this opinion, we have examined the organizational documents of the Company, including, but not limited to, the Company’s certificate of incorporation and by-laws, a certificate of good standing issued by the Secretary of State of the State of New York, as well as resolutions of the Board of Directors of the Company authorizing the execution and delivery of the Agreement and the Security Agreement by the Company and the performance by the Company of its obligations under each thereof. In addition, we have examined such other certificates of public officials, such other documents and matters of law as we have deemed necessary under the circumstances. In such examination, we have assumed the genuineness of all signatures by persons other than representatives of the Company on original documents and the conformity to original and certified documents of all copies submitted to us as conformed or purporting to be photostatic or telecopied copies. On the basis of the foregoing examination and assumptions and in reliance thereon, we are of the opinion that, as of this date:

1. The Company is duly formed and validly existing as a not-for-profit corporation under the laws of the State of New York and is duly qualified to conduct business in the State of New York.
2. The Company has the power and authority to execute and deliver the Agreement, the Security Agreement and the related documents and to perform and do all acts to be performed by it thereunder.

3. The execution and delivery of the Agreement, the Security Agreement and the related documents have been duly authorized by all necessary corporate action on the part of the Company and do not and will not: (a) contravene the certificate of incorporation or by-laws of the Company, (b) 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 the Company, or (c) cause the Company to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award.
4. The Agreement, the Security Agreement and the related documents constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

The foregoing opinions are subject to the following qualifications:

- (a) No person or entity other than the City or its successors or its counsel may rely or claim reliance on the opinions expressed herein.
- (b) The rights and remedies set forth in the Agreement and the related documents may be limited by bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium and other laws of general application and equitable principles relating to or affecting the enforcement of creditors' rights.
- (c) Certain remedies under the Agreement and the related documents may require enforcement by a court of equity and such enforcement is subject to principles of equity as courts having jurisdiction may impose, including, by way of example, but not by way of limitation, the right of a court of equity to refuse to specifically enforce obligations of the Company and/or grant equitable relief to the City.
- (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.
- (e) The effect of laws hereinafter passed or court decrees hereinafter issued may limit or render unenforceable certain of your rights and remedies.

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,

EXHIBIT E

SUPPLY AND SERVICE RIDER

(SEPARATE ATTACHMENT)



## E.O. 50 SUPPLY & SERVICE RIDER

### EQUAL EMPLOYMENT OPPORTUNITY

This contract is subject to the requirements of Executive Order No. 50 (1980) as revised (“**E.O.50**”) and the Rules and Regulation promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that:

- (1) it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation 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 or employment:
- (2) when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the race, color, creed, national origin, sex, age disability, marital status or sexual orientation of the owner, manager or any officer, director, agent or employee of such, subcontractors.
- (3) it will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) it 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; and
- (5) it will furnish all information and reports including an Employment Report before the award of the contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the of the New York City Department of Small Business Services, Division of Labor Services (“DLS”), and will permit access to its books, records and accounts by the Bureau for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders such noncompliance shall constitute a material breach of the contract 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 may direct the imposition upon the Contractor of any or all of the following sanctions:

1. disapproval of the contractor;
2. suspension or termination of the contract;
3. declaring the contractor in default; or

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

The Director of DLS may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 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 subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance.

The contractor 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 subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

EXHIBIT F

TAX AFFIRMATION

(SEPARATE ATTACHMENT)

**TAX AFFIRMATION**

**Funding Recipient affirms that it is not in arrears to the City of New York upon debt or contract, or taxes, and is not a defaulter as surety or otherwise, upon obligation to the City of New York upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification or the Funding Recipient to receive public contracts.**

**SIGNATURE OF FUNDING RECIPIENT**

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**Full Name (Company)**

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**Address**

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**EIN**

**By:** \_\_\_\_\_  
**Signature** **Title**

**Subscribed and sworn to before me**

**This** \_\_\_\_\_ **day of** \_\_\_\_\_ **19**\_\_\_\_\_

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**Notary Public**

**Commission Expires:** \_\_\_\_\_ **19**\_\_\_\_\_

SCHEDULE I

ELECTRONIC FUNDS TRANSFER VENDOR PAYMENT ENROLLMENT FORM

(SEPARATE ATTACHMENT)



# DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

**INSTRUCTIONS:** Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

**Mail to:** NYC Department of Finance, Treasury Division, One Centre Street, Room 727, New York, NY 10007  
**- Attention:** EFT, or **Fax to:** EFT at 212-669-4656.

## SECTION I - VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER:  
(AS IT APPEARS ON W-9 FORM)

2. VENDOR NAME (AS IT APPEARS ON W-9 FORM):

3. VENDOR'S PRIMARY ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON NAME: CONTACT PERSON TELEPHONE NUMBER:

## SECTION II - FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER: 2. ACCOUNT NAME:

3. BANK NAME:

4. BANK BRANCH ADDRESS:

5. ROUTING TRANSIT NUMBER:  
(LOCATED AT THE BOTTOM OF YOUR CHECK)

6. ACCOUNT TYPE:  
(CHECK ONE)  CHECKING  SAVINGS

7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME: TELEPHONE NUMBER:

## SECTION III - VENDOR SIGNATURE

\_\_\_\_\_  
VENDOR SIGNATURE PRINT NAME DATE

**DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)  
VENDOR PAYMENT ENROLLMENT FORM**

**GENERAL INSTRUCTIONS**

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to: NYC Department of Finance, Treasury Division, One Centre Street, Room 727, New York, NY 10007 - Attention: EFT, or Fax to: EFT at 212-669-4656.

**SECTION I - VENDOR INFORMATION**

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person.)

**SECTION II - FINANCIAL INSTITUTION INFORMATION**

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account: (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

**SECTION III - VENDOR SIGNATURE**

Sign and date where indicated.