

**FOR VEHICLE 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 \_\_\_\_\_, 200\_

Relative to acquisition of vehicles for  
[describe type of facility]  
At [address]

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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, in order to assist the operations of Funding Recipient, Funding Recipient seeks to acquire the motor vehicle(s) listed in **Exhibit A** attached hereto and made a part hereof (the “**Vehicle(s)**”) for use at or out of the premises identified as \_\_\_\_\_ (the “**Premises**”); and

WHEREAS, Funding Recipient has requested that the City and DDC provide funding for the acquisition of certain of the Vehicle(s) necessary to assist its operations; and

WHEREAS, the City and DDC have 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 discretionary funds to assist them in providing a public service; and

WHEREAS, the City has appropriated \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Funding**”) in discretionary funds in its capital budget (“**Capital Budget**”) to subsidize Eligible Costs (as hereinafter defined) incurred by Funding Recipient for the purchase of Eligible Vehicle(s) (as hereinafter defined); and

WHEREAS, in order to facilitate the acquisition of Eligible Vehicle(s), Funding Recipient, DDC, and the City consider a funding agreement, pursuant to which Funding Recipient will acquire, and the City acting through DDC will pay for Eligible Costs incurred by Funding Recipient for the purchase of, Eligible Vehicle(s), to be an appropriate mechanism through which the City Capital Budget funds appropriated for such purposes can be paid; 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 hereinafter defined), including, without limitation, the City Purpose Covenant (as hereinafter defined), simultaneously herewith Funding Recipient has executed and delivered to DDC a security agreement (“**Security Agreement**”), dated as of the date hereof, pursuant to which Funding Recipient has granted to DDC a first Lien (as hereinafter defined) and prior security interest in and to all Eligible Vehicle(s) purchased with the proceeds of the Funding and other Collateral more fully described in the Security Agreement.

NOW, THEREFORE, DDC 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 DDC 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.

“**Completed Cover Sheet**” has the meaning provided in Section 5.01(a) 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.

“**DMV**” has the meaning provided in Section 3.02(a) hereof.

“**Eligible Costs**” means costs and expenses incurred by Funding Recipient for the acquisition of Eligible Vehicle(s), provided that 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 the Vehicle(s), any overhead of Funding Recipient or the salary or expenses related to any officer or employee of Funding Recipient or any Affiliate.

“**Eligible Vehicle(s)**” means Vehicle(s) that satisfy the following conditions: (a) the Vehicle(s) may be paid for with funds appropriated by the City in its Capital Budget, (b) the Vehicle(s) are not subject to any lease arrangement, title retention agreement, purchase money mortgage or other Lien, (c) the Vehicle(s) have an expected useful life of at least **[five (5) years] [or ten (10) years for ambulances]** from the date of purchase, (e) the Vehicle(s) are new, are road-worthy and fit for all purposes for which they were purchased, and comply with all applicable Requirements, and (f) the Vehicle(s) are protected by manufacturer’s and/or vendor’s warranties.

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

“**Indemnites**” 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**” 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.

“**Notice of Lien**” has the meaning provided in the Security Agreement.

“**Parties**” means DDC 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.

“**Prohibited Person**” means:

- (a) Any Person (i) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, or (ii) that directly or indirectly controls, is controlled by, or is under common control with a Person that 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) Any Person (i) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (ii) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.
- (c) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof.
- (d) Any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended.
- (e) Any Person that has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is



then being contested with due diligence in proceedings in a court or other appropriate forum.

- (f) Any Person (i) that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City, or (ii) that, directly or indirectly controls, is controlled by, or is under common control with a Person that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

**“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 Vehicle(s), 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.

**“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 Vehicles, the use of the Vehicles in accordance with the City Purpose Covenant, or the implementation of the Project.

**“Vehicle(s)”** has the meaning provided in the Preamble hereof.

## ARTICLE 2

### TERM

Section 2.01. Term. The term of this Agreement (the **“Term”**) shall commence upon the unconditional execution and delivery by both Parties and registration by the Comptroller in accordance with City procedures, 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 DDC 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.

Section 2.02.

Extension of Term. At the request of Funding Recipient, DDC may, in its sole discretion, grant an extension of the Term. Any such request must state the reason why an extension of the Term is required and the total number in days of the requested extension of the Term. The ruling of DDC shall be final and binding as to the allowance of an extension of the Term and the number of days allowed.

### 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, DDC 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 DDC pursuant to this Agreement.

(b) Funding Recipient acknowledges that neither DDC nor the City has represented or warranted that the Funding will be sufficient to pay the cost of acquiring the Vehicle(s) and/or 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 and operating the Vehicle(s) 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. Certain Terms and Conditions.

(a) Prior to submission of each Requisition for a disbursement of the Funding hereunder, Funding Recipient shall deliver to DDC a properly completed and executed Notice of Lien for each Vehicle covered by the Requisition together with the Certificate of Title for each such Vehicle, if available. DDC will file such Notice(s) of Lien (and Certificate(s) of Title, if submitted by Funding Recipient) with the New York State Department of Motor Vehicles (“DMV”). Promptly, upon receipt thereof from DMV, Funding Recipient shall furnish to DDC a copy of the Certificate(s) of Title for each such Vehicle indicating that DDC is the sole lienholder.

(b) All disbursements shall be made at the principal office of DDC, or at such other place as DDC may designate. Disbursement requests shall be submitted within the time periods and in the manner provided therefor in this Article 3.

(c) Disbursements of the Funding shall be made no more frequently than once every thirty (30) days.

(d) DDC shall not be obligated to make any disbursement with respect to any Vehicle in excess of the amount stated therefor in the Budget. Funding Recipient shall promptly refund any excess disbursements made by DDC upon DDC’s request. If the amount payable for

any Eligible Vehicle exceeds the amount payable therefor in the Budget, Funding Recipient shall promptly pay such excess.

(e) DDC may, in its sole discretion, either (i) reimburse Funding Recipient for Eligible Costs incurred and paid by it for the acquisition of Eligible Vehicles, or (ii) make payments for any Eligible Vehicles directly to the Eligible Vendor therefor instead of to Funding Recipient.

(f) Any excess in the Funding over the aggregate amount of Eligible Costs shall be returned promptly to DDC unless DDC authorizes Funding Recipient in writing to use such excess otherwise.

Section 3.03. Availability of Funding. Funding Recipient understands and agrees that DDC anticipates that it will receive the Funding from the appropriation therefor in the City's Capital Budget for the purposes of this Agreement. Accordingly, the agreement by DDC to disburse the Funding is subject to availability of the Funding in the Capital Budget (and the other terms, covenants and condition of this Agreement) and, in the event that the appropriation for the Funding is not available for any reason whatsoever, DDC shall not be required to disburse any portion of the Funding not previously disbursed and may, in its sole discretion, terminate this Agreement immediately, upon notice to Funding Recipient. Thereupon, DDC shall have no obligation to disburse any amounts of the Funding.

Section 3.04. DDC's Right to Terminate. DDC, in its sole discretion, may notify Funding Recipient that DDC has determined that the cost of purchasing the Vehicle(s) will likely exceed the funds available to Funding Recipient. If within thirty (30) days after receipt of such notice, Funding Recipient fails to provide DDC with sufficient evidence that such aforementioned costs will not exceed the funds available to Funding Recipient or if the evidence submitted by Funding Recipient is not satisfactory to DDC, DDC 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 3.05. Funding May Cure Defaults. DDC 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 provided that Funding Recipient shall have failed prior to the expiration of any applicable grace period to cure such Default. Any portion of the Funding so applied by DDC 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 Vehicle(s).

(a) Eligible Vendors. Funding Recipient may acquire Eligible Vehicles only from vendors that are acceptable to DDC in DDC's sole discretion ("**Eligible Vendors**").

(b)

List of Proposed Vendors. Prior to purchasing any Vehicle(s), Funding Recipient shall submit to DDC 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 DDC shall reasonably request. After receipt of all the requisite information, DDC 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 DDC.

(c) Bidding Requirements. Funding Recipient must obtain bids from at least three (3) firms from the list of Eligible Vendors. Funding Recipient must submit to DDC 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 DDC's prior written consent to a higher bidder. Prior to Funding Recipient's acceptance of a bid, DDC reserves the right at any time to withdraw its prior approval of the vendor chosen by Funding Recipient if such vendor has become a Prohibited Person, as determined by DDC in its sole discretion.

(d) Sole Source. Notwithstanding the requirements of Section 4.01(c) above, DDC may, in its sole and absolute discretion, authorize Funding Recipient to procure Vehicle(s) 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 Vehicle(s) and the Vehicle(s) to be provided thereby constitute Eligible Vehicle(s). In such instances, Funding Recipient shall provide DDC with such information regarding the selection of the vendor in question as DDC shall require.

(e) Single Source. Notwithstanding the requirements of Section 4.01(c) above, although two (2) or more vendors can supply the requisite Vehicle(s), DDC 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 of the Vehicle(s) on a single source basis from vendor(s) identified by Funding Recipient, provided that such Vehicle(s) would otherwise constitute Eligible Vehicle(s) and the vendor(s) thereof otherwise constitute Eligible Vendors. In such instances, Funding Recipient shall provide DDC 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.

(f) National Purchasing Contract. Funding Recipient may also purchase Eligible Vehicle(s) 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, which Eligible Vendor is not a Prohibited Person.

(g) 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 DDC, in its reasonable discretion) that would have been paid by Funding Recipient to an unrelated party in an arms length transaction.

Section 4.02. Certain Limitation on Use of Funding. Any costs incurred in connection with the purchase of Vehicle(s) that violate the procurement requirements of this Article shall not constitute Eligible Costs and the proceeds of the Funding may not be used to pay for such purchase.

## ARTICLE 5

### DISBURSEMENT OF THE FUNDING

Section 5.01. Initial Submission. DDC shall not be required to disburse any of the Funding to Funding Recipient unless, at least thirty (30) Business Days (or such earlier date as DDC shall reasonably require) prior to the date on which initial disbursement of the Funding is sought, DDC shall have received the following documents:

(a) Completed Cover Sheet. A cover sheet listing the items submitted certified as to their truth and authenticity, to the best of Funding Recipient's knowledge by Funding Recipient's Chief Financial Officer (a "**Completed Cover Sheet**") which references this Section of this Agreement.

(b) Insurance Policies. Copies of certificates (or at the request of DDC, original certificates), in form and substance reasonably satisfactory to DDC, evidencing the insurance policies described in Exhibit B hereto together with proof of payment of premiums; provided, however, that DDC 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 judgment and tax lien search with respect to Funding Recipient and the Vehicle(s) showing no competing Liens on the Collateral.

(d) The Security Agreement and Evidence of DDC's Lien as a First Priority Lien. The Security Agreement duly executed by Funding Recipient together with evidence reasonably satisfactory to DDC that Funding Recipient has complied with the requirements of Sections 3.02(a) hereof, it being understood and agreed that Funding Recipient shall be deemed to have complied with the foregoing requirement by delivering to DDC at its address set forth below a copy of a Certificate of Title for each Vehicle paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding showing DDC as the sole lienholder. The address where the above-mentioned Certificates of Title must be delivered by Funding Recipient pursuant to this Section is as follows: New York City Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101, Attention: Bruce Rudolph.

(e) Budget. A budget satisfactory to DDC in form and substance (the "**Budget**") that identifies the Vehicle(s) 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 DDC's approval and may only be amended with DDC's prior written consent. Notwithstanding any provision of this Agreement to the contrary, the amount which DDC shall disburse for any Eligible Vehicle shall not exceed the cost therefor set forth in the approved Budget.

(f)

Formation 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.

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

Section 5.02. All Submissions. DDC shall not be obligated to disburse any of the Funding unless at least thirty (30) Business Days prior to the date on which each disbursement is sought Funding Recipient submits the following documents to DDC:

(a) Requisitions. A requisition ("Requisition") executed and certified by the Funding Recipient's Chief Financial Officer substantially in the form of **Exhibit C** hereto.

(b) Additional Information. Such additional documents or information reasonably requested by DDC with respect to the Vehicle(s) or in support of the Requisition, including without limitation: (1) documents as would customarily be required by lenders and other participants in transactions for the finance and/or purchase of motor vehicles; and (2) statements identifying payments, if any, made to Affiliates.

Section 5.03. Requisitions Update Funding Recipient's Representations. Funding Recipient agrees that each Requisition presented to DDC 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 and as the date of disbursement requested in 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 5.04. Direction of Submissions. All submissions of Requisitions to DDC 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 DDC may instruct Funding Recipient.

Section 5.05. 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 AND LOCATION OF VEHICLE(S): REGISTRATION WITH DMV

Section 6.01. Operation of Vehicle(s). The Vehicle(s) paid for or intended to be paid for, directly or indirectly, 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 Vehicle(s). The Vehicles paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding shall be stored at and operated out of the Premises at all times during the Performance Term. Notwithstanding the foregoing, any Vehicle may be stored away from the Premises for maintenance or repair. If any Vehicle is no longer stored at the Premises, except as otherwise required for maintenance or repair, Funding Recipient shall immediately provide written notice of the new location to DDC.

Section 6.03. Registration of the Vehicle(s) with DMV. Funding Recipient shall cause the Vehicle(s) paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding to be registered with DMV as often, to the extent and in the manner required thereby and shall upon request provide DDC with evidence of such registration.

## ARTICLE 7

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

Section 7.01. Maintenance of Vehicle(s); DMV Inspections. Funding Recipient, at its sole cost and expense, shall keep the Vehicle(s) paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding in good condition and working order, ordinary wear and tear from proper use excepted.

Section 7.02. DMV Inspections of Vehicles. Funding Recipient shall make all necessary adjustments, repairs and replacements required by the Vehicles paid for or intended to be paid for directly or indirectly with the proceeds of the Funding such that each year during the Performance Term such Vehicles shall pass the requisite annual DMV inspections.

Section 7.03. Alterations. Funding Recipient shall not make any alterations, additions or improvements to the Vehicle(s) paid for or intended to be paid for directly or indirectly with the proceeds of the Funding except as may be required pursuant to this Article without DDC's prior written consent unless such alterations, additions or improvements do not impair the commercial value or the utility of such Vehicle(s).

Section 7.04. No Violations of Insurance and Warranty Requirements. Funding Recipient shall not violate any insurance or warranty requirements with respect to the or the Vehicle(s) paid for or intended to be paid for directly or indirectly with the proceeds of the Funding.

## ARTICLE 8

### CERTAIN REPRESENTATIONS AND WARRANTIES OF FUNDING RECIPIENT

Funding Recipient hereby represents and warrants to DDC 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. No Prohibited Persons. As of the date hereof, none of the members (if any), shareholders (if any), partners (if any), principals or officers of Funding



Recipient (or any entity having an ownership interest in Funding Recipient or in such other entity) is a Prohibited Person.

Section 8.08. No Liens on the Vehicle(s) and other Collateral. There are no Liens of record on the Vehicle(s) paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding and/or on any other item of other Collateral pledged by Funding Recipient as security for any of the terms, covenants and/or conditions on its part to be performed and/or observed under any of the Transactional Documents except such Liens as shall be subordinated of record to DDC's Lien prior to the disbursement of any Funding hereunder. Except as otherwise provided herein, Funding Recipient shall pay any and all costs and charges to perfect and assure priority of the City's security interest in the Collateral, including all fees, charges, taxes, and costs, whether payable to a governmental or private entity.

Section 8.09. Eligible Vehicle(s). Each and every Vehicle paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding constitutes an Eligible Vehicle.

Section 8.10. Documents Submitted to DDC. All information submitted to DDC in connection with the Funding is complete and correct and fairly presents the condition, operations and prospects of Funding Recipient as of the date hereof. Funding Recipient has not misstated, omitted or withheld any fact in connection with its application for the Funding upon which DDC may have relied in its decision to contribute the Funding to Funding Recipient. Each invoice, bill of sale, receipt, check or other document or instrument, heretofore or hereafter submitted to DDC by Funding Recipient in connection with the Funding, upon submission was or shall be 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 or DDC. No representations, warranties or statements, express or implied, have been made by, or on behalf of, DDC or the City with respect to the Vehicles' fitness for the use contemplated by this Agreement or the Requirements applicable to the Vehicle(s), 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. For a period of [**five (5) for regular vehicles**] [**ten (10) for ambulances**] years from the date that the last Vehicle paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding is delivered to Funding Recipient (the “**Performance Term**”), Funding Recipient shall continue to own and use all such Vehicle(s) for the benefit of the City to **[SPECIFY SERVICE BEING PROVIDED–THIS IS DIFFERENT FOR EACH ORGANIZATION]**. Funding Recipient shall take all actions necessary to ensure that such Vehicle(s) are 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 Vehicle 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 provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 9.03. Due Application of Funding Proceeds. Funding Recipient shall dedicate the proceeds of the Funding and any insurance proceeds arising out of any casualty affecting Vehicle(s) purchased with the Funding exclusively to reimburse itself for Eligible Costs incurred and paid by it for the purchase of Eligible Vehicle(s) 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. Funding Recipient shall not discriminate against any Person based on race, religion, creed, color, national origin, sex, age, disability, marital status, sexual orientation or a political affiliation. The Vehicles paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding shall not be used to advance or support sectarian activity, including religious worship, instruction or proselytization.

Section 9.05. Obligation to Comply with Requirements. Funding Recipient shall comply with all Requirements applicable to the use and operation of the Vehicle(s) 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 DDC with copies of any notice of default received by it under any of the insurance policies referred to in this Section 9.08. 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 DDC such other information respecting the Vehicle(s) as DDC may from time to time reasonably request.

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 DDC.

Section 9.12. Liens. Funding Recipient shall not create, permit or suffer to exist any mortgage, encumbrance, Lien or security interest against the Vehicle(s) or against Funding Recipient's interest therein, if any, or against any of the Funding other than Liens in favor of DDC created pursuant to the Transactional Documents.

Section 9.13. Evidence of Title. Funding Recipient shall deliver to DDC, on demand, certified copies of any contracts, bills of sale, statements, receipted vouchers or agreements under which Funding Recipient claims title to any Vehicle(s) paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding.

Section 9.14. Conflict of Interests. No public official, servant or employee of DDC or 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 the Vehicle(s) or in any activity or benefit arising out of or in connection with the acquisition or operation of the Vehicle(s). Upon receiving notice or having knowledge of any such prohibited interest, Funding Recipient immediately shall advise DDC 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 DDC or the City shall be charged personally with any liability, or held personally liable, in connection with the purchase and operation of the Vehicle(s), 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 DDC certain employment reports relative to the requirements of **Exhibit E** in a form prescribed by the City.

Section 9.17. Emergency Contraception. If Funding Recipient is a facility operating pursuant to Article 28 of the New York Public Health Law and Funding Recipient provides emergency medical care, Funding Recipient acknowledges that it is subject to the emergency contraception provisions annexed to and made a part of this Agreement as **Exhibit F**.

## 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 Vehicle(s) 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, DDC 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. DDC, the Comptroller and their respective agents or representatives 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 the Vehicle(s). Funding Recipient shall produce all such books, records, papers and files, upon request of DDC, the Comptroller or their respective agents and representatives 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 DDC’s rights under this Agreement.

Section 10.03. Inspections of the Vehicles. Funding Recipient shall permit DDC to inspect the Vehicles paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding, from time to time, during normal business hours as DDC deems necessary to determine compliance with the terms, covenants and conditions of this Agreement. Funding Recipient shall also permit inspections to be made by the City and its employees, designees, consultants and agents as are normally made by the City and its agencies, including without limitation the Comptroller, in the course of a project similar in nature and magnitude to the transactions contemplated by this Agreement. The omission or failure of DDC or the City or any representative thereof to make such inspections, to identify any defects or to notify Funding Recipient of any observable defects or any non-compliance with the terms of this Agreement

shall in no way relieve Funding Recipient of its obligations under this Agreement or impose any liability upon the City and/or DDC.

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 DDC and the City. Neither DDC nor the City shall be liable to Funding Recipient, any vendor or any other Person for any matter arising out of or in connection with the acquisition and operation of the Vehicle(s), 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 DDC 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 DDC's failure to make such disbursement shall be to obtain the requisite disbursement from DDC. In no event shall either the City or DDC be liable for any other damages and/or costs or expenses, including, without limitation, consequential damages and attorneys' fees, due to any such failure.

Section 11.02. Release. Funding Recipient hereby releases DDC and 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 the Vehicle(s) and/or any actions taken or omitted to be taken by DDC and/or the City with respect thereto.

## ARTICLE 12

### INDEMNIFICATION

Section 12.01. Obligation to Indemnify. Funding Recipient shall defend, indemnify and save the City and DDC and their respective 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 any of the following, 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 to Person or Property. Any accident, bodily injury (including death at any time resulting therefrom) or damage to any person or property occurring

in connection with the use and operation of the Vehicle(s);

(c) Lien or Claim Against Vehicles. Any Lien or claim that may be alleged to have been imposed or arisen against or on the Vehicle(s), 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 DDC, or any liability that may be asserted against the City or DDC with respect thereto; and/or

(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 Vehicle(s).

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 or DDC, 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 Section 12.04 within fifteen (15) business days after the City's or DDC'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 DDC 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 DDC'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 of DDC required under this Agreement shall be granted in DDC's sole discretion, and, once granted, may be subject to such conditions as DDC 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 Vehicles 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) 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.

(f) 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.

(g) 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.

Section 15.02. Certain Remedies. Upon the occurrence of an Event of Default, DDC 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 DDC at law and/or equity), in which event DDC 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 DDC's disbursement thereof at the Late Charge Rate;

(c) the right to take possession of the Vehicle(s); 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 DDC 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 DDC 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 DDC must be delivered to the following addresses and addressees or to such other addresses or addressees as DDC may notify Funding Recipient of 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 DDC of:

**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 Vehicle(s), 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 DDC 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 DDC or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or authorization given by DDC or the City or any of their officers, agents or employees. 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 DDC and Funding Recipient, and DDC and Funding Recipient will not be considered 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, DDC 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 \_\_\_\_\_, 200\_\_, 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 NEW YORK        )

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, 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

LIST OF VEHICLES

(SEPARATE ATTACHMENT)

EXHIBIT B

INSURANCE REQUIREMENTS

(SEPARATE ATTACHMENT)

## INSURANCE REQUIREMENTS

A. Insurance Requirements. At all times from and after the date hereof until expiration of the Performance Term, Funding Recipient, at its sole cost and expense, shall carry and maintain in full force and effect, or cause to be carried and maintained in full force and effect, insurance coverage of the following types and in the minimum limits set forth below:

(1) Liability Insurance. Commercial General Liability insurance, written on an occurrence basis and not on a claims made basis, protecting against all liability with respect to the Vehicles paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding 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, and designating Funding Recipient as “named insured,” and the City and DDC, as “additional insureds” on a primary and non-contributory basis, including products liability and completed operations. 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. The Commercial General Liability Insurance required hereby shall:

(a) include a broad form property damage liability endorsement with fire legal liability limit of not less than One Hundred Thousand Dollars (\$100,000) subject to adjustment for inflation;

(b) contain blanket contractual liability insurance covering written and oral contractual liability, and specifically covering Funding Recipient’s indemnification obligations under Article 12 hereof;

(c) contain independent contractors coverage;

(d) contain a notice of occurrence clause;

(e) contain a thirty (30) day notice of cancellation or non-renewal clause, specifically requiring notice of cancellation or non-renewal for non-payment of premium, and for any material reduction in coverage.

(f) contain an unintentional errors and omissions clause;

(g) contain coverage for suits arising from the use of reasonable force to protect persons and property;

(h) contain a cross liability endorsement;

(i) contain no exclusion for Water Damage or Sprinkler Leakage Legal Liability or any other hazard customarily covered by such insurance; and

(j) contain no exclusions, except as specifically authorized herein, and contain no deductibles unless specifically approved in each instance by DDC.

(2) Automobile Insurance. Automobile insurance insuring Funding Recipient and the Vehicles paid for directly or indirectly with the proceeds of the Funding against (i) bodily injury liability, (ii) medical payments, no-fault or personal injury protection coverage, (iii) uninsured motorists coverage, (iv) comprehensive physical damage coverage, (v) collision coverage, and (vi) property damage liability with limits as reasonably designated by DDC from time to time but in any event with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence with respect to personal and bodily injury, death and property damage and which shall designate DDC and the City as additional insureds and loss payees.

(3) Statutory Workers' Compensation and Disability Benefits Insurance. Statutory Workers' Compensation, and New York Disability Benefits Insurance, in statutory amounts, as required by applicable law, and any other insurance required by law covering all persons employed by Funding Recipient, contractors, subcontractors or any entity performing work on or for the Premises, including Employers' Liability coverage in an amount not less than One Million Dollars (\$1,000,000).

B. Treatment of Proceeds.

(1) Proceeds of Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to DDC to be held for the purpose of paying for the cost of replacing the Vehicles paid for or intended to be paid for, directly or indirectly, with the proceeds of the Funding. DDC 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 DDC 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 DDC shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Funding Recipient and DDC shall execute and deliver such proofs of loss and other instruments as may be required of Funding Recipient or DDC, 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 or another comparable rating reasonably acceptable to DDC.

(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

(a) a provision that no act or omission of Funding Recipient, including, without limitation, any use of the Vehicles paid for or intended to be paid for, directly or indirectly 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 DDC,

(b) 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 DDC, including, without limitation, cancellation or non-renewal for non-payment of premium, and

(c) a provision that notice of accident or claim to the insurer by Funding Recipient, and/or DDC shall be deemed notice by all insureds under the policy. Notices from the insurer to DDC 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 DDC must be delivered to the following addresses or to such other addresses as DDC 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. DDC 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 DDC. All other insurance policies required hereby shall provide that all adjustments for claims with the insurers be made with both DDC and Funding Recipient, both of which shall act reasonably.

D. Evidence of Insurance. Prior to disbursement of any Funding by DDC to Funding Recipient 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 DDC certificates of insurance, in form reasonably satisfactory to DDC. At DDC'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 DDC 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.

G. Increases in Coverage and Additional Insurance. DDC 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 vehicles comparable to the Vehicles paid for or intended to be paid for, directly or indirectly, 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, DDC 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 DDC 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 DDC that such insurance is in any respect adequate.

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

(1) 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 Vehicles paid for or intended to be paid for, directly or indirectly 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 Vehicles 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 DDC certified copies of such policies together with schedules annexed thereto setting forth the amount of insurance applicable to such Vehicles and proof reasonably satisfactory to DDC 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) 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 Four Million Dollars (\$4,000,000) 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 DDC's insurance coverage, prior to purchase thereof Funding Recipient shall provide a copy of the policy to DDC for its approval.

L. Modification by Insurer. Without limiting any of Funding Recipient's obligations or DDC'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 DDC 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

FORM OF REQUISITION

(SEPARATE ATTACHMENT)



REQUISITION

New York City Department of Design and Construction

[FUNDING RECIPIENT]

Address:

Contract dated \_\_\_\_\_, for Vehicle(s) to be used \_\_\_\_\_  
\_\_\_\_\_.

Amount of Requested Disbursement: \$ \_\_\_\_\_

<b>Vehicle Purchased And purpose therefor</b>	<b>Date of Purchase</b>	<b>Cost of Vehicle</b>	<b>Eligible Vendor</b>

Other Eligible Costs, if any, covered by this disbursement:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

I \_\_\_\_\_ hereby certify that the Vehicle(s) listed above have been received on the premises, are paid in full, and attached are true and complete copies of invoices/receipts and purchase orders, each as applicable marked paid in full, from each vendor named above for the item(s) corresponding thereto.

Print: \_\_\_\_\_  
Name  
Title

EXHIBIT D

OPINION OF COUNSEL

(SEPARATE ATTACHMENT)

, 200\_

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 \_\_\_\_\_, 200\_  
between The City of New York (the “**City**”), acting by and through its  
Department of Design and Construction (“**DDC**”) and  
\_\_\_\_\_ (the “**Company**”), and Security Agreement  
 (“**Security Agreement**”) dated as of \_\_\_\_\_, 200\_ 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 \_\_\_\_\_, \_\_\_\_\_, of the Company. In addition, we have examined such matters of law as we have deemed necessary under the circumstances. In such examination, we have assumed the genuineness of all signatures 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) require any consent or approval by any Person, (b) contravene the charter or by-laws of the Company, (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 the Company, (d) result in a breach of, or constitute a default or require any consent under, any indenture or agreement, lease or instrument to which the Company is a party or its properties may be bound or affected, (e) cause the Company to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or in default under any such indenture, agreement, lease or instrument, or (f) result in or require the creation or imposition of a Lien, upon or with respect to any of the properties or interests now owned or hereafter acquired by the Company.

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

EMERGENCY CONTRACEPTION

(SEPARATE ATTACHMENT)