

[FOR VEHICLES PURCHASES FUNDED WITH CAPITAL BUDGET MONIES ONLY]

[Drafting Note:

Highlighted and/or bracketed provisions are either for reference purposes only
or require the insertion of project specific information.
Please remove these references in the final version of this agreement.]

FUNDING AGREEMENT

between

THE CITY OF NEW YORK

acting by and through its

DEPARTMENT OF DESIGN AND CONSTRUCTION

and

**[FUNDING RECIPIENT– INCLUDE BOTH PARENT AND SUBSIDIARY
CORPORATIONS]**

Dated as of _____20__

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FUNDING AGREEMENT dated as of _____, 20__ (“Agreement”) between THE CITY OF NEW YORK (the “City”) acting by and through its DEPARTMENT OF DESIGN AND CONSTRUCTION (“DDC”) having an office at 30-30 Thomson Avenue, Long Island City, New York 11101, and both _____ (“[Insert: Abbreviated Name of Parent Corporate Entity]” or “Parent”), a not-for-profit corporation organized pursuant to the Not-For-Profit Corporation Law of the State of New York having its principal office at [Address of Parent Corp.], and _____ (“[Insert: Abbreviated Name of Subsidiary Corporate Entity]” or “Subsidiary”), a not-for-profit corporation organized pursuant to the Not-For-Profit Corporation Law of the State of New York having its principal office at [Address of Subsidiary Corp.] (hereinafter the term “Funding Recipient” means both Parent and Subsidiary.)

RECITALS

1. Funding Recipient operates a [INSERT: TYPE OF ORGANIZATION, E.G., “SCHOOL,” “SOCIAL SERVICE” OR “CULTURAL INSTITUTION”] and provides [INSERT BRIEF DESCRIPTION OF SERVICE PROVIDED] to the people of New York.

2. Funding Recipient seeks to acquire motor vehicles to facilitate the performance and delivery of its programs, and services and has requested that the City provide financial assistance to subsidize the acquisition of said vehicles.

3. The City has determined that Funding Recipient provides programs and services that benefit the City and its inhabitants and that it is in the best interest of the people of the City to reimburse Funding Recipient for Eligible Costs (as defined in Section 1.02 hereof) incurred and paid by Funding Recipient for the acquisition of vehicles for use in connection with its programs and services.

4. To assist Funding Recipient with the acquisition of vehicles as provided above, the City has appropriated _____ Dollars (\$ _____) (the “**Funding**”) in its Capital Budget.

5. This Agreement sets forth the terms, covenants and conditions applicable to the contribution of the Funding to Funding Recipient for the acquisition of vehicles for use in connection with its programs and services, including, without limitation, the requirement that Funding Recipient perform, observe and comply with the City Purpose Covenant (as defined in Section 4.01 hereof).

6. As security for the performance and observance of the terms, covenants and conditions of Funding Recipient hereunder and under the other Transactional Documents, including, without limitation, the City Purpose Covenant, simultaneously herewith Funding Recipient has executed and delivered to the City a City Purpose Security Agreement (“**Security Agreement**”) dated as of the date hereof pursuant to which Funding Recipient grants to the City a first Lien and prior security interest in and to all City-Funded Vehicles and other Collateral more fully described in the Security Agreement.

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

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.01. Applicability to Parent and Subsidiary; Liability. The requirements and obligations of this Agreement that are applicable to the Funding Recipient (or applicable to a “contractor” or “Contractor” intended to mean the Funding Recipient) shall apply to both Parent and Subsidiary unless there are specific requirements or obligations that by their terms would only apply to one or the other, as determined in the sole and absolute discretion of the City. If requirements or obligations to be performed by Funding Recipient can be fulfilled by either Parent or Subsidiary, it will be the responsibility of Parent and Subsidiary to determine between themselves which entity will perform such requirements or obligations; provided, however, that the requirements under Sections 6.02(c) and (d) of this Agreement shall be fulfilled by **[Insert: Either the Parent or Subsidiary]**. Notwithstanding the foregoing, Parent shall ensure the performance of all requirements and obligations to be performed by Funding Recipient under this Agreement and ensure full compliance with the terms and conditions of this Agreement, whether by Parent and/or Subsidiary, and Parent shall bear all liability for its own and Subsidiary’s nonperformance and/or noncompliance hereunder and for its own and Subsidiary’s acts or omissions. If Parent and Subsidiary terminate their affiliation during the Performance Term, then Parent shall notify the City in writing as soon as practicable and no later than thirty (30) days after the effective date of such termination.

Section 1.02. For the purposes of this Agreement, the capitalized terms set forth in this Section 1.02 shall have the meanings assigned to such terms. Additional capitalized terms and their respective definitions are found throughout this Agreement.

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

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

“**City-Funded Vehicles**” means vehicles that have been paid for by Funding Recipient and for which Funding Recipient has been reimbursed by, or intends to seek reimbursement from, the City in whole or in part with the Funding.

“**City Purpose Covenant**” has the meaning provided in Section 4.01 hereof.

“**Collateral**” has the meaning assigned to such term in the Security Agreement.

“**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.

“**DMV**” means the New York State Department of Motor Vehicles.

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

“**Eligible Costs**” means costs and expenses incurred by Funding Recipient after the date of the appropriation of the Funding by the City for the acquisition of vehicles that satisfy the following conditions:

(a) In the sole and absolute discretion of the City, said costs and expenses are financeable by the City with bond proceeds pursuant to the New York State Local Finance Law, the City Charter, the directives of the Comptroller and all other applicable laws, regulations and guidelines.

(b) Said vehicles: (i) are not subject to any lease arrangement, title retention agreement, purchase money mortgage or other Lien; (ii) have an expected useful life of no less than five (5) years; (iii) are new, road-worthy and fit for the purpose for which they were purchased; (iv) comply with all Legal Requirements applicable to their intended use and operation; (v) are protected by all available manufacturer’s and/or vendor’s warranties; and (vi) have been procured in accordance with the procurement requirements of Article 3.

The specific items of Eligible Costs for which the City has agreed to reimburse Funding Recipient with the Funding (i.e., the City – Funded Vehicles and related costs) are set forth in the Project Budget.

“**Event of Default**” has the meaning provided in Section 14.01 hereof.

“**Funding**” has the meaning provided in the Recitals 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.

“**Indemnitees**” has the meaning provided in Section 10.01 hereof.

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

“**Legal 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: (a) the Funding and the use thereof; (b) Funding Recipient’s status as a not-for-profit corporation; (c) the acquisition, use, operation and disposal of City-Funded Vehicles, including, without limitation, the use of such

City-Funded Vehicles in accordance with the City Purpose Covenant; and/or (d) the implementation of the transactions contemplated by this Agreement.

“**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.

“**Notice of Lien**” means a DMV Notice of Lien in the form attached hereto as Schedule II.

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

“**Performance Term**” has the meaning provided in Section 4.01(a) 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.

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

“**Project Budget**” has the meaning provided in Section 5.03(a) hereof.

“**Reimbursement Request**” has the meaning provided in Section 6.01(b) hereof.

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

“**State**” means the State of New York.

“**Transactional Documents**” means, collectively, this Agreement, the Security Agreement, any “operational” or similar agreement between Funding Recipient and the City providing for the performance of services by Funding Recipient to its target population, and each other document, instrument and certificate executed by Funding Recipient or any other Person in connection with the transactions contemplated by this Agreement.

ARTICLE 2

EFFECTIVE DATE

Section 2.01. Effective Date.

(a) This Agreement shall become effective on the Effective Date and shall expire, except as to those provisions that expressly survive the termination or expiration hereof,

upon expiration of the Performance Term, unless sooner terminated by the City as authorized by this Agreement.

(b) For the purposes hereof “**Effective Date**” means the earliest date on which all of the conditions precedent set forth in Section 2.02, Section 2.03 and Section 2.04 hereof shall have occurred and/or shall have been satisfied. The disbursement of any portion of the Funding by the City to Funding Recipient shall constitute the City’s acknowledgment that said conditions precedent have been satisfied as of the date of said disbursement.

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

(a) Sufficient Funds. The City shall have determined that, in its sole reasonable discretion, Funding Recipient has sufficient funds and other financial resources (such as enforceable pledges and binding loan commitments from lending institutions) in excess of the Funding to cover any portion of the costs of City-Funded Vehicles that is not paid for with the Funding and the costs and expenses to be incurred by Funding Recipient for the use and operation of City-Funded Vehicles in accordance with the City Purpose Covenant during the Performance Term. Funding Recipient shall submit to the City evidence reasonably satisfactory to the City demonstrating that Funding Recipient has sufficient funds and other financial resources to allow the City to make the foregoing determination.

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

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

(a) The Security Agreement. The Security Agreement duly executed by Funding Recipient.

(b) Judgment and Tax Lien Search. A judgment and tax Lien search conducted by a reputable title company or other established Lien search company reasonably satisfactory to the City dated not more than thirty (30) days prior to the date of this Agreement evidencing that there are no Liens on City-Funded Vehicles and other Collateral covered by the Security Agreement, except Liens in favor of the City.

(c) Insurance Policies. Certificates satisfactory to the City in form and substance, evidencing the insurance policies described in Exhibit B together with evidence of payment of premiums for said insurance and, at the request of the City, copies of the policies evidenced by such certificates.

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

(e) Tax Affirmation. A Tax Affirmation in the form attached hereto as Exhibit F signed by the Chief Executive Officer of Funding Recipient.

(f) EFT Vendor Payment Enrollment Form. Properly completed EFT Vendor Payment Enrollment Form in the form attached hereto as Schedule I.

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

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

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

ARTICLE 3

PROCUREMENT AND DISCLOSURES

Section 3.01. General Information. Funding Recipient understands and agrees that costs and expenses incurred in connection with the acquisition of equipment, vehicles and services that do not comply with any of the requirements of this article shall not constitute Eligible Costs and may not qualify for reimbursement with the proceeds of the Funding.

Section 3.02. Bids and Quotes.

(a) Prior to purchasing City-Funded Vehicles and/or procuring services, Funding Recipient shall obtain bids or quotes from three (3) vendors, which may consist of telephone and/or internet quotes, and shall provide a list thereof.

(b) Notwithstanding the requirements of Section 3.02(a), Funding Recipient may obtain less than the prescribed three (3) bids or quotes, if Funding Recipient: (i) reasonably determines that only a lesser number of vendors can provide City-Funded Vehicles and/or services to its satisfaction, and (ii) provides a statement reasonably satisfactory to the City explaining Funding Recipient's determination that there are less than three (3) vendors who can provide City-Funded Vehicles and/or services to Funding Recipient's satisfaction.

Section 3.03. Selection of Vendors. Funding Recipient shall purchase City-Funded Vehicles and procure services from vendor(s) who, in the reasonable discretion of Funding Recipient, provide the most advantageous combination of price, quality and fitness for the intended purpose provided that, if Funding Recipient selects a vendor who is not the lowest bidder, Funding Recipient shall provide a statement reasonably satisfactory to the City justifying Funding Recipient's selection.

Section 3.04. Disclosures; Lack of Business Integrity. Funding Recipient represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with the New York City Administrative Code Section 6-116.2, applicable City rules, and the policies and procedures of the Mayor's Office of Contract Services. Funding Recipient acknowledges that the City's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and Funding Recipient represents and warrants that the information it and its principals have provided is accurate and complete. If at any time a City review or other investigation discloses any information about Funding Recipient and/or any vendor that indicates a lack of business integrity, the City, may, in its sole and absolute discretion: (a) in the case of Funding Recipient, terminate this Agreement and/or require that any Funding previously disbursed to Funding Recipient be promptly repaid to the City, (b) in the case of any such vendor, disqualify such vendor from receiving any funding and/or require that any Funding previously disbursed to Funding Recipient as reimbursement for payments made to such vendor be promptly repaid to the City, and (c) take any other actions available to the City under applicable law or this Agreement.

Section 3.05. Transactions with Affiliates. Except as permitted by this Agreement, Funding Recipient shall not enter into any transaction with any Affiliate involving

the Funding, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, without first obtaining the City’s written consent.

ARTICLE 4

COVENANTS APPLICABLE TO CITY-FUNDED VEHICLES

Section 4.01. City Purpose Covenant.

(a) Funding Recipient shall make use of all City-Funded Vehicles to provide the services required by Section 4.01(b) below to the people of the City for a period commencing on the date that the City makes the first disbursement of the Funding and ending [redacted] years from the date that the City makes the final disbursement of the Funding (the “**Performance Term**”), it being understood and agreed that the records maintained by the City regarding this Agreement shall be final and conclusive evidence as to the date that the City made the first and final disbursement of the Funding.

(b) Funding Recipient shall make use of all City-Funded Vehicles consistently, during its regular hours of operation as described in Section 4.03 below, for the duration of the Performance Term to: **[Note: DESCRIBE NOT-FOR-PROFIT SERVICES TO BE PROVIDED WITH THE CITY-FUNDED VEHICLES.]**

(c) The obligations contained in this Section shall be referred to as the “**City Purpose Covenant.**”

Section 4.02. Sectarian Uses. City-Funded Vehicles shall not be used to advance or support sectarian activity, including religious worship, instruction or proselytizing. Notwithstanding the preceding, subject to the requirements of the City Purpose Covenant, any City-Funded Vehicles may be made available to any Person, including Funding Recipient itself, on a neutral, non-discriminatory basis for any religious or nonreligious purposes or activities, provided that such City-Funded Vehicles are generally made available to the general public for such purposes or activities on substantially similar terms and conditions, the availability of such City-Funded Vehicles for such purposes or activities on such terms and conditions is made known to the general public, and the use of such City-Funded Vehicles for any such purposes or activities is occasional and temporary.

Section 4.03. Frequency of Use of City-Funded Vehicles. Funding Recipient understands and agrees that, in its application for the Funding, Funding Recipient warranted and represented to the City that its regular hours of operation are [redacted], and that it would make consistent use of City-Funded Vehicles not less frequently than [redacted]. Funding Recipient further understands and agrees that the frequency of use of City-Funded Vehicles was a material consideration in the City’s determination to make the Funding available to Funding Recipient, and that the failure to use City-Funded Vehicles as frequently as represented and warranted to the City may result in the occurrence of an Event of Default and would authorize the City to avail itself of its remedies set forth in Article 14 hereof.

Section 4.04. Beneficiaries of Services. Funding Recipient understands and agrees that it has represented to the City that it would not deny the benefits of its services to any person based on race, religion, creed, color, national origin, sex, age, disability, marital status, sexual orientation or a political affiliation. Funding Recipient further understands and agrees that its representation that it would make its services available to the people of New York on a non-discriminatory basis was a material consideration in the City's determination to make the Funding available to Funding Recipient, and that Funding Recipient's failure to make its services available on a non-discriminatory basis as represented to the City may result in the occurrence of an Event of Default and would authorize the City to avail itself of its remedies set forth in Article 14 hereof.

Section 4.05. Ownership, Control and Liens. Unless Funding Recipient first obtains the City's written consent, Funding Recipient shall not: (a) transfer ownership or control (by sale, lease, loan or otherwise) in and to any City-Funded Vehicles to any Person, (b) dispose of or exchange any City-Funded Vehicles, or (c) create, permit or suffer to exist any Lien against any City-Funded Vehicles, except Liens in favor of the City.

Section 4.06. Operation; Use by Unrelated Persons.

(a) All City-Funded Vehicles shall be used and operated by Funding Recipient only in the ordinary conduct of its business in accordance with all applicable operating instructions and applicable Legal Requirements.

(b) Funding Recipient shall not allow use or operation of any City-Funded Vehicles by any unrelated Person, i.e., any Person who is not affiliated with Funding Recipient as an employee, volunteer, client or member of Funding Recipient's intended service population and/or any Person who does not operate or make use of City-Funded Vehicles in accordance with the City Purpose Covenant, unless such use or operation is incidental, occasional and temporary.

Section 4.07. Location. Each City-Funded Vehicle when not in regular use shall be parked at its assigned parking lot or garage located in New York City, and may not be parked elsewhere without the City's prior written consent, except that any City-Funded Vehicles may be temporarily parked at other locations for maintenance or repair. Funding Recipient understands and agrees that City-Funded Vehicles may not be parked at any time at a private residence, except, momentarily, to pick up a client or for another bona fide business purpose. The address(es) for the parking lots and garages where City-Funded Vehicles may be parked are set forth in Exhibit A hereof.

Section 4.08. Registration of City-Funded Vehicle(s) with DMV. Funding Recipient shall cause all City-Funded Vehicles to be registered with DMV as often as, to the extent, and in the manner, required by DMV, and shall provide the City, upon request, with evidence of such registration.

Section 4.09. Maintenance; DMV Inspections.

(a) Funding Recipient, at its sole cost and expense, shall keep all City-Funded Vehicles in good condition and working order, ordinary wear and tear from proper use excepted, and shall make all necessary adjustments, repairs and replacements, thereto.

(b) Without limiting the generality of the foregoing, Funding Recipient shall make all necessary adjustments, repairs and replacements that may be required by City-Funded Vehicles in order to pass all inspections required by DMV.

Section 4.10. Alterations. Funding Recipient shall not make any alterations, additions or improvements to City-Funded Vehicles except as may be required pursuant to this Article without the City's prior written consent, unless such alterations, additions or improvements do not impair the commercial value or the utility of such City-Funded Vehicles.

Section 4.11. No Violations of Insurance and Warranty Requirements. Funding Recipient shall not violate any insurance or warranty requirements with respect to City-Funded Vehicles.

Section 4.12. Labels and Tags. Promptly, upon acquisition thereof, Funding Recipient shall prominently affix a durable label or tag (as, for instance, an aluminum property tag) to each City-Funded Vehicle stating as follows:

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

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

Section 4.13. Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement, but will expire upon expiration of the Performance Term.

ARTICLE 5

THE FUNDING

Section 5.01. Agreement to Fund. Subject to the terms, covenants and conditions of this Agreement, the City agrees to disburse the Funding to Funding Recipient to reimburse Funding Recipient for Eligible Costs incurred and paid by Funding Recipient in connection with City-Funded Vehicles.

Section 5.02. Limitation on Amount of Funding. The amount of Funding that the City agrees to disburse to Funding Recipient shall not exceed the aggregate amount of Eligible Costs incurred by Funding Recipient and reimbursable to Funding Recipient by the City pursuant to this Agreement.

Section 5.03. Project Budget.

(a) Attached hereto as Exhibit A is a detailed budget (the “**Project Budget**”) that sets forth Eligible Costs for which Funding Recipient proposes to seek reimbursement from the City with the Funding and all other costs and expenses to be incurred by Funding Recipient for the acquisition of City-Funded Vehicles as well as the source of the funds to be used by Funding Recipient to pay for such costs.

(b) The Project Budget may not be amended and the amount of any City-funded line item may not be increased without the City’s prior written approval, provided, however, that, if Funding Recipient realizes a cost savings in connection with a City-funded line item in the Project Budget, Funding Recipient may, upon notice to the City, use the cost savings in connection with another City-funded line item in the Project Budget, except to fund: a type of vehicle that is different from the types of City-Funded Vehicles covered by the Project Budget, or (ii) an increase in the number of units included in any City-funded line item.

Section 5.04. Payments to the City. Funding Recipient shall make no payment to the City in connection with the Funding and/or City-Funded Vehicles, except for payments demanded by the City in connection with a Default or Event of Default under this Agreement, indemnification by Funding Recipient of the City under this Agreement, generally applicable taxes and fees and any payments authorized or required by any provision of this Agreement.

Section 5.05. Repayment of the Funding. Funding Recipient shall not be relieved of any of its obligations hereunder by repaying or returning the Funding in whole or in part to the City.

Section 5.06. Survival. The provisions of Section 5.04 and Section 5.05 hereof shall survive the expiration or earlier termination of this Agreement, but will expire upon expiration of the Performance Term.

ARTICLE 6

DISBURSEMENT OF THE FUNDING

Section 6.01. Disbursement of the Funding.

(a) The Funding will be disbursed to reimburse Funding Recipient for Eligible Costs incurred and paid by Funding Recipient and authorized by the Project Budget. The disbursement of the Funding is subject to the satisfaction of the conditions precedent set forth in Section 6.02 below and the prior receipt by the City of a Reimbursement Request accompanied by the supporting documentation described in Section 6.03 below.

(b) For the purposes hereof “**Reimbursement Request**” means a properly completed written request to the City in a form satisfactory to the City requesting a disbursement of the Funding to reimburse Funding Recipient for Eligible Costs incurred and paid by Funding Recipient during the period covered by said Reimbursement Request. Each Reimbursement Request must be executed by an authorized representative of Funding Recipient.

Section 6.02. Conditions Precedent to Disbursement of the Funding. The occurrence of the following shall be conditions precedent to each disbursement of the Funding:

(a) Sufficient Funds. The City shall have determined that, in its sole reasonable discretion, Funding Recipient has sufficient funds and other financial resources (such as enforceable pledges and binding loan commitments from lending institutions) to make use and operate City-Funded Vehicles in accordance with the City Purpose Covenant for the duration of the Performance Term. Funding Recipient shall submit to the City upon request evidence reasonably satisfactory to the City demonstrating that Funding Recipient has sufficient funds and other financial resources to allow the City to make the foregoing determination.

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

(c) Notice of Lien; Certificate of Title. For each City-Funded Vehicle covered by the Reimbursement Request, the City shall have received:

(i) a properly completed and executed Notice of Lien in the form of Schedule II hereof accompanied by the corresponding Certificate of Title. The City will file the Notice of Lien with DMV and request that DMV note the City's Lien on the Certificate of Title.

(ii) a copy of the Certificate of Title submitted by the City to DMV in accordance with Section 6.02(c)(i) above reflecting the City's Lien as the only Lien on the City-Funded Vehicle covered by said Certificate of Title.

(d) Judgment and Tax Lien Search. Funding Recipient shall have provided to the City an updated judgment and tax Lien search conducted by a reputable title company or other established lien search company, searched and dated no more than thirty (30) days prior to the date of submission of the Reimbursement Request to the City evidencing that there are no Liens on City-Funded Vehicles or other Collateral covered by the Security Agreement, except Liens in favor of the City.

Section 6.03. Supporting Documentation. Together with the Reimbursement Request Funding Recipient shall submit to the City such additional documents and information reasonably requested by the City with respect to City-Funded Vehicles and other Eligible Costs for which Funding Recipient seeks reimbursement from the City with the Funding, including, without limitation: (a) copies of cancelled checks, paid invoices and packing slips, and (b) documents that would customarily be required by lenders and other participants in transactions for the finance and/or purchase of vehicles.

Section 6.04. Deadlines for Submission of Reimbursement Requests. Unless the City authorizes otherwise, Funding Recipient shall submit its Reimbursement Request to the City

not later than twelve (12) months from the date that this Agreement is registered by the Comptroller pursuant to City procedures. The City, in its sole and absolute discretion, may reject a Reimbursement Request submitted to the City after said deadline.

Section 6.05. Limitation on Number of Reimbursement Requests. Unless the City authorizes otherwise, Funding Recipient shall not submit more than one (1) Reimbursement Request to the City under this Agreement.

Section 6.06. Payment of Reimbursement Request. The City shall endeavor to disburse the Funding requested by Funding Recipient pursuant to a Reimbursement Request within thirty (30) days from the City's receipt thereof or such other period as the City shall determine, in its sole reasonable discretion, would allow the City sufficient time to undertake its review of the Reimbursement Request and all supporting and other documentation required to be submitted to the City pursuant to this Agreement in connection with the Reimbursement Request.

Section 6.07. Electronic Funds Transfer.

(a) In accordance with Section 6-107.1 of the New York City Administrative Code, Funding Recipient agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to payment made under this Agreement, Funding Recipient shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" attached hereto as Schedule I in order to provide the Commissioner of Finance with information necessary for Funding Recipient to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Funding Recipient shall constitute satisfaction in full by the City of the amount of the disbursement required under this Agreement. The account information supplied by the Funding Recipient to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

(b) The City's Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the City may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

Section 6.08. Delivery of Reimbursement Request. The Reimbursement Request shall be directed to Office of the General Counsel, New York City Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101 or to such other Person and/or address as the City may instruct Funding Recipient.

ARTICLE 7

CERTAIN REPRESENTATIONS AND WARRANTIES OF FUNDING RECIPIENT

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

Section 7.01. Organization, Good Standing and Due Qualification. Funding Recipient is a not-for-profit corporation duly incorporated, validly existing and in good standing under the laws of the State 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 7.02. 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 by Funding Recipient and do not and will not: (a) require any consent or approval of any Governmental Authorities or other Person, except such consents and approvals as have been secured by Funding Recipient and are in effect on the date of this Agreement; (b) contravene the charter or by-laws of Funding Recipient; (c) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award 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 agreement, lease or instrument to which Funding Recipient is a party or its properties may be bound or affected, including, without limitation, any of the Transactional Documents; (e) cause Funding Recipient to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or in default under any such indenture, agreement, lease or instrument, including, without limitation, any of the Transactional Documents; or (f) result in or require the creation or imposition of a Lien, upon or with respect to any of the properties or interests now owned or hereafter acquired by Funding Recipient, except for Liens in favor of the City.

Section 7.03. 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 7.04. 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 and/or the Security Agreement.

Section 7.05. Operation of Business. 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.

Section 7.06. Integrity and Responsibility. Neither Funding Recipient nor any Person that is a Principal of Funding Recipient:

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

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

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

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

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

Section 7.07. Taxes; Public Obligations. Funding Recipient is not in arrears to the United States, the City or the State upon debt, contract, or taxes, has not defaulted as surety or otherwise on any obligation to the City or the State, and has not been declared not responsible or disqualified by any agency of the City or the State, nor is there any proceeding pending relating to the responsibility or qualification of Funding Recipient to receive public contracts.

Section 7.08. Funding is Not Compensation. The Funding is not a fee or other compensation earned by or paid to Funding Recipient.

Section 7.09. No Defaults. (a) No Default has occurred and is continuing under this Agreement, and no Event of Default, or other event which with the giving of notice, or the passage of time, or both, would constitute an Event of Default has occurred under this Agreement, and (b) Funding Recipient is not in default under any of the Transactional Documents or any other agreement with the City.

Section 7.10. Eligible Costs. Each and every item covered by the Reimbursement Request presented to the City: (a) constitutes an Eligible Cost and (b) is authorized by the Project Budget for reimbursement by the City with the Funding.

Section 7.11. No Conflicting Liens. There are no Liens on any City-Funded Vehicles, except Liens in favor of the City.

Section 7.12. Information Submitted to the City. All information submitted to the City by Funding Recipient in connection with the Funding is true, complete and correct in all

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

Section 7.13. Procurement of Agreement. No Person or entity (other than an officer, partner or employee working solely for Funding Recipient) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect 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 7.14. No Representations by the City. No representations or warranties, expressed or implied, have been made by or on behalf of the City with respect to: (a) the adequacy or fitness of any City-Funded Vehicles for the purposes authorized by this Agreement, (b) the Legal Requirements applicable to the acquisition thereof and/or use thereof in accordance with the City Purpose Covenant, and Funding Recipient has not relied on any such representations or warranties in its determination to enter into this Agreement and assume its obligations hereunder.

Section 7.15. Reimbursement Request Renews Representations and Warranties. Funding Recipient agrees that its submission of a Reimbursement Request to the City renews all representations and warranties made by Funding Recipient in this Agreement and that all such representations and warranties shall remain true, complete and correct as of the date of such Reimbursement Request.

ARTICLE 8

CERTAIN ADDITIONAL COVENANTS

Section 8.01. Legal Requirements. Funding Recipient shall comply with all Legal Requirements applicable to the use and operation of City-Funded Vehicles and Funding Recipient's performance of its obligations hereunder.

Section 8.02. 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 8.03. Maintenance of and Compliance with Insurance Requirements. Funding Recipient shall maintain or cause to be maintained at Funding Recipient's expense the insurance coverage referred to in Exhibit B hereto. Funding Recipient shall comply with all of

the applicable provisions of such insurance policies. Funding Recipient will promptly furnish the City with copies of any notice of default received by it under any of the insurance policies referred to in this Section. Nothing contained in this Section is intended to confer any rights upon any third party.

Section 8.04. Assignment. Funding Recipient's rights and obligations under this Agreement shall not be pledged, transferred or assigned without the prior written consent of the City. Funding Recipient agrees that the City shall have the right to assign this Agreement and/or the City's rights under this Agreement in whole or in part without any further consent on the part of Funding Recipient to any Person designated by the City.

Section 8.05. No Conflicting Liens. Funding Recipient shall not create, permit or suffer to exist any Lien against the Funding, any City-Funded Vehicles and/or other Collateral covered by the Security Agreement, except Liens in favor of the City.

Section 8.06. Evidence of Title. Funding Recipient shall deliver to the City, on demand, certified copies of any contracts, bills of sale, statements, receipted vouchers or agreements, under which Funding Recipient claims title to any City-Funded Vehicles.

Section 8.07. Conflict of Interests. No public official of the City who exercises or exercised any functions or responsibilities with respect to 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 City-Funded Vehicles or in any activity or benefit arising out of or in connection with the acquisition or operation of such City-Funded Vehicles. Upon receiving notice or having knowledge of any such prohibited interest, Funding Recipient immediately shall advise the City thereof and shall use its best efforts to terminate such prohibited interest. Funding Recipient shall require each of its vendors, contractors and subcontractors who sold City-Funded Vehicles to warrant and represent in writing for themselves, and on behalf of their principals, employees and agents, that, to the best of their knowledge after due diligence, 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 8.08. Notice of Material Adverse Change. Funding Recipient shall notify the City in writing within thirty (30) days after gaining any knowledge of a material adverse change in Funding Recipient's condition (financial or otherwise), business, operations or prospects at any time during the Performance Term.

Section 8.09. No Discrimination. Funding Recipient shall not unlawfully discriminate against any Person based on race, religion, creed, color, national origin, sex, age, disability, marital status, sexual orientation or political affiliation.

Section 8.10. Equal Opportunity and Affirmative Action. Funding Recipient shall comply with the provisions of City and State of New York Legal Requirements related to equal opportunity and affirmative action applicable to non-construction contractors, which for purposes of this Agreement shall be deemed to include the provisions set forth in the "Equal

Employment Opportunity Rider” and the rules and regulations referred to therein, attached hereto to and made a part hereof as Exhibit D. In addition, Funding Recipient shall submit to the City certain employment reports relative to the requirements of Exhibit D in a form prescribed by the City.

Section 8.11. 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 Schedule V.

ARTICLE 9

LIMITATION ON LIABILITY; RELEASE

Section 9.01. No Personal Liability. No official, officer, employee, agent or servant of the City shall be liable (personally or otherwise) to Funding Recipient or any other Person under or by reason of this Agreement or any of the matters contemplated by this Agreement.

Section 9.02. Release. Funding Recipient understands and agrees that, except for the City’s failure to disburse any portion of the Funding to Funding Recipient to the extent required by this Agreement, to the fullest extent permissible under applicable law, the acceptance of each disbursement of the Funding by Funding Recipient shall constitute a release of the City and its officials, officers, employees, agents and servants from all claims that Funding Recipient and/or any Person acting by or on behalf of Funding Recipient may have against any of the foregoing arising out of or in connection with this Funding Agreement and/or the Security Agreement prior to the date of acceptance of the disbursement of the Funding.

Section 9.03. Limitation of Liability. Funding Recipient understands and agrees that in the event that there shall be a final determination by a court of competent jurisdiction that the City has failed to make a required disbursement of the Funding, the only remedy available to Funding Recipient or any other Person claiming harm by reason of the City’s failure to make such disbursement shall be to obtain the requisite disbursement from the City. In no event shall the City or any of its officials, officers, employees, agents or servants be liable for any other damages and/or costs and expenses, including, without limitation, consequential damages and attorneys’ fees, due to any such failure.

Section 9.04. Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 10

INDEMNIFICATION

Section 10.01. Obligation to Indemnify. Funding Recipient shall defend, indemnify and save the City and its officials, officers, employees, agents and servants

(collectively, the “**Indemnitees**”) harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, court costs and reasonable attorneys’ fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of, or in connection with, any of the matters contemplated by this Agreement, 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.

Section 10.02. Contractual Liability. The obligations of Funding Recipient under this Article shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part to be performed under insurance policies affecting City-Funded Vehicles.

Section 10.03. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees that is subject to Funding Recipient’s indemnification obligations hereunder then, upon demand of the City and/or such Indemnitee, 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 selected by Funding Recipient and reasonably satisfactory to such Indemnitees. Each Indemnitee shall reasonably cooperate in the defense or settlement of such claim, action or proceeding. The foregoing notwithstanding, any 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. No Indemnitee shall settle any such claim, action or proceeding without Funding Recipient’s prior consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Funding Recipient shall be deemed to have given its consent if, within fifteen days after request therefor from an Indemnitee, Funding Recipient shall have failed to grant or withhold said consent.

Section 10.04. 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 10.01. Funding Recipient agrees to pay such Indemnitee all amounts due under this Article within fifteen (15) business days after the City’s request therefor.

Section 10.05. Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 11

BOOKS AND RECORDS; INSPECTIONS, AUDITS AND COMPLIANCE

Section 11.01. Maintenance of Books and Records.

(a) Funding Recipient shall keep and maintain complete and accurate books and records regarding the Funding, the acquisition of City-Funded Vehicles and the other matters

contemplated by this Agreement and the Security Agreement, including records to substantiate responses in a Compliance Report substantially in the form attached hereto as Schedule IV. Funding Recipient shall preserve such records for a period of at least six (6) years from the expiration of the Performance Term. However, if, at the expiration of such six (6) year period, the City is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Funding Recipient shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

(b) All books and records required hereby shall be kept and maintained by Funding Recipient at Funding Recipient's principal office, if its principal office is located in New York City and, if not, at another location in New York City. Funding Recipient shall provide the City with the address where all said books and records are maintained.

Section 11.02. Inspections and Audits. The City and its officials, officers, employees, agents and servants, including, without limitation, the Comptroller shall have the right from time to time during regular business hours, upon reasonable prior notice, to:

(a) 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 and/or Funding Recipient's compliance with the terms, covenants and conditions of this Agreement or any other agreement related to City-Funded Vehicles. Upon request by the City, Funding Recipient shall produce all such books, records, papers and files for inspection at a location in New York City reasonably satisfactory to the Parties. Subject to applicable law, all information obtained from Funding Recipient's books, records, papers and files shall be held in confidence, except as may be necessary for the enforcement of the City's rights under this Agreement and the Security Agreement.

(b) Inspect City-Funded Vehicles and any and all records relating in any manner to City-Funded Vehicles, including, without limitation, maintenance and repair records, DMV registrations and logs describing service calls and other uses made of City-Funded Vehicles. At the request of the City, Funding Recipient shall make all City-Funded Vehicles available for inspection at their assigned parking location set forth in Exhibit A hereof.

Section 11.03. Inventory of City-Funded Vehicles.

(a) Within twelve (12) months of the date that the Comptroller registers this Agreement pursuant to City procedures, Funding Recipient shall submit to the City an inventory of all City-Funded Vehicles purchased and delivered to date substantially in the form attached hereto as Schedule III.

(b) The inventory of City-Funded Vehicles required hereby shall be delivered to the City at the following address:

Title: Compliance Officer
Address: Counsel's Office
Office of Management and Budget
255 Greenwich Street

New York, New York 10007

(c) Funding Recipient understands and agrees that each submission to the City of the inventory required hereby constitutes a representation and warranty to the City that all information contained therein is timely, complete and correct.

Section 11.04. Compliance Report.

(a) Within eighteen (18) months of the date that this Agreement is registered by the Comptroller in accordance with City procedures and on each anniversary thereof until and including the first such anniversary occurring after the last year of the Performance Term, Funding Recipient shall submit to the City a properly completed Compliance Report substantially in the form attached hereto as Schedule IV. The completed Compliance Report shall be signed on behalf of Funding Recipient by its Chief Executive Officer.

(b) The completed Compliance Report shall be delivered to the City at the following address:

Title: Compliance Officer
Address: Counsel's Office
Office of Management and Budget
255 Greenwich Street
New York, New York 10007

(c) Funding Recipient understands and agrees that each submission to the City of a Compliance Report constitutes a representation and warranty to the City that all information contained therein is timely, complete and correct.

Section 11.05. Survival. The obligations of Funding Recipient under this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 12

CONSENTS AND APPROVALS

Section 12.01. Effect of Granting or Failure to Grant Consents or Approvals. 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 12.02. Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Agreement, any consent or approval by the City is not to be unreasonably

withheld or is subject to a specified standard, then in the event there shall be a final 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 12.03. No Unreasonable Delay; Reasonable Satisfaction; Discretion. Wherever this Agreement provides that the City's consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed. Any matter required to be done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party. Unless specifically stated otherwise, all consents required of the City under this Agreement shall be granted in the City's sole discretion, and once granted, may be subject to such conditions as the City may impose in its sole reasonable discretion.

ARTICLE 13

INVESTIGATIONS

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

ARTICLE 14

EVENTS OF DEFAULT AND CERTAIN REMEDIES

Section 14.01. 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 comply with any of the terms, covenants or conditions of the Security Agreement on its part to be performed and/or observed.

(d) Funding Recipient shall fail to perform or observe any of the terms, covenants or conditions on its part to be performed or observed pursuant to 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).

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

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

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

(h) 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 Code 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 Code 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 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.

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

any such stay, such appointment shall not be vacated.

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

Section 14.02. Certain Remedies. Upon the occurrence of an Event of Default, the City may exercise any right, power or remedy permitted to it by law or in equity, or 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, or available to the City or under the Security Agreement, at law and/or equity.

(b) The right to obtain restitution of all or any portion of the Funding previously disbursed to Funding Recipient together with interest from the date of the City's disbursement thereof at the Late Charge Rate.

(c) The right to take possession of City-Funded Vehicles and other Collateral as permitted under the Security Agreement.

(d) The right to enforce Funding Recipient's obligations under this Agreement and the Security Agreement by any means authorized by contract, law and/or equity, including, but not limited to, equitable remedies of specific performance, declaratory judgment or injunction.

Section 14.03. Remedies Not Exclusive. No right or remedy conferred upon the City in this Agreement is intended to be exclusive of any other right or remedy contained in this Agreement. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Agreement or now or hereafter available to the City at law, in equity, by statute or otherwise.

Section 14.04. The City's Right of Setoff. Funding Recipient does hereby authorize and direct the City to, upon prior notice to Funding Recipient, apply all or any portion of the Funding to any amounts payable by Funding Recipient under this Agreement that remain unpaid as and when due, it being understood and agreed that any such application of the Funding by the City shall not relieve Funding Recipient of any of its obligations hereunder or cure any Default of Funding Recipient on account of any such failure to make a requisite payment as and when due. Amounts of the Funding applied by the City in accordance with this Section shall be deemed a proper disbursement of the Funding in accordance with the terms of this Agreement. For the foregoing purposes, Funding Recipient does hereby grant the City a security interest in, right of set-off against and transfers, pledges and assigns to the City all of Funding Recipient's right, title and interest, if any, to the Funding.

ARTICLE 15

NOTICES

- 25 -

Section 15.01. Notices. All notices and correspondence to and from the City and Funding Recipient 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. Receipt of notice or communication by the Party to whom the notice or communication is transmitted shall be deemed to have occurred: (1) upon receipt, if hand delivered; (2) five days from the date of mailing, if mailed; or (3) the next Business Day after delivery by Airborne Express, Express Mail or other overnight delivery service that provides a receipt to the sender.

(a) All notices and correspondence to the City shall be delivered to the following addresses and addressees or to such other addresses or addressees as the City may notify Funding Recipient from time to time:

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

and

Title: Compliance Officer
Address: Counsel's Office
Office of Management and Budget
255 Greenwich Street
New York, New York 10007

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

Title: _____
Address: _____

with a copy to:

Title: _____
Address: _____

ARTICLE 16

CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

Section 16.01. Waiver of Trial by Jury. Funding Recipient hereby waives 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 relationship of the City and Funding Recipient, Funding Recipient's use and operation of City-Funded Vehicles, and/or any claim for injury or damages.

Section 16.02. Jurisdiction. Any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in the City of New York ("**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 the City of New York, 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 16.03. 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 15 hereof. Nothing in this Section shall affect the right of the City to serve legal process in any other manner permitted by law.

Section 16.04. Counterclaims. In the event that the City commences any action or proceeding against Funding Recipient for or in connection with any Default or Event of Default on the part of Funding Recipient under this Agreement, Funding Recipient will not interpose any counterclaim of any nature whatever or description in any such action or proceedings unless such counterclaim is of a compulsory nature such that it would as a matter of common law be barred if not raised therein.

ARTICLE 17

MISCELLANEOUS

Section 17.01. 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 17.02. 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 17.03. Amendments. This Agreement may not be amended except by an instrument in writing signed by both Parties.

Section 17.04. Waiver. No failure by either Party to exercise, and no delay in exercising, any right, power or privilege under this Agreement, and no course of dealing between the Parties, shall constitute a waiver of any such right, power or privilege nor preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 17.05. Entire Agreement. This Agreement and the Security Agreement contain all of the promises, agreements, conditions, inducements and understandings between the Parties concerning the Funding and there are no other promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between the Parties about the Funding other than those expressly set forth herein or therein or expressly contained in any written documents, agreements or instruments related to the Funding executed by either or both Parties.

Section 17.06. 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 17.07. Severability. 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 17.08. No Agency, Partnership or Joint Venture.

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

(b) Nothing herein contained shall be construed in any manner to create any partnership or joint venture between the City and Funding Recipient, and the City and Funding Recipient shall not be deemed partners or co-venturers for any purpose.

Section 17.09. 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 17.10. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon and inure to the benefit of the City and Funding Recipient and, except as otherwise provided herein, their respective successors and assigns.

Section 17.11. 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 17.12. Counterparts. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

No additional text on this page.

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

Approved as to Form
Certified as to Legal Authority
by Standard Type of Class

NEW YORK CITY DEPARTMENT OF
DESIGN AND CONSTRUCTION

s/ Acting Corporation Counsel

By: _____
Name: Lorraine Grillo
Title: Commissioner
Date:

[PARENT]

By: _____
Name:
Title:
Date:

[SUBSIDIARY]

By: _____
Name:
Title:
Date:

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

On the _____ day of _____, 20__, before me the undersigned, personally appeared Lorraine Grillo, 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 she executed the same in his capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

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

Notary Public

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

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

Notary Public

EXHIBIT A

PROJECT BUDGET

(SEPARATE ATTACHMENT)

[Note: The list of vehicles must also clearly delineate the address(es) for the parking lots and garages where City-Funded Vehicles will be parked.]

EXHIBIT B

INSURANCE REQUIREMENTS

(SEPARATE ATTACHMENT)

INSURANCE REQUIREMENTS

From and after the Effective Date until expiration of the Performance Term, Funding Recipient, at its sole cost and expense, shall maintain (or cause to be maintained) in full force and effect insurance coverage of the following types, in the minimum limits and for the periods set forth below, and shall otherwise comply with the requirements of this Exhibit. There shall be no self-insurance program with regard to any insurance required under this Exhibit unless approved in writing by the City. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Exhibit. Unless the context otherwise requires, defined terms utilized and not otherwise defined herein shall have the meanings assigned to such term in the Agreement to which this Exhibit is attached and made a part of:

Section 1.01. Insurance Protecting City-Funded Vehicles.

(a) At all times during the Performance Term, Funding Recipient shall maintain insurance against loss of or damage to City-Funded Vehicles in an amount not less than the actual cash value thereof. Such insurance may be provided through (i) commercial property insurance that covers the City-Funded Vehicles, (ii) commercial automobile insurance at least as broad as Insurance Services Office Form CA 00 01 10 13 that includes, but is not limited to, comprehensive physical damage coverage, specified causes of loss coverage, and collision coverage, and/or (iii) another commercially-recognized type of insurance that is reasonably satisfactory to the City. For any City-Funded Vehicles with installed equipment, Funding Recipient shall ensure that the insurance policy covers such equipment and the replacement thereof.

(b) In the event of a loss or damage with respect to City-Funded Vehicles, Funding Recipient shall promptly execute and provide to its insurers such proofs of loss and other instruments as may be necessary to recover any insurance proceeds, and shall simultaneously provide copies of such proofs of loss and other instruments to the City. Such insurance proceeds shall be applied to the prompt repair and/or replacement of City-Funded Vehicles.

(c) In the event the insurance proceeds are less than the cost of repair and/or replacement of City-Funded Vehicles required in order for the City-Funded Vehicles or their replacements to be used in accordance with the requirements of the City Purpose Covenant, the Funding Recipient agrees to use its own funds to cover the difference between the cost of such repair and/or replacement of the City-Funded Vehicles and the insurance proceeds.

(d) The City, in its sole discretion, may waive in writing the requirement that Funding Recipient apply the insurance proceeds to repair and/or replace the City-Funded Vehicles such that the City-Funded Vehicles can be used in accordance with the requirements of the City Purpose Covenant. In such event, the City may elect for the Funding Recipient to allocate the insurance proceeds between the City and Funding Recipient as follows: (i) to the City, an amount equal to the amount of the Funding actually disbursed to Funding Recipient for

the City-Funded Vehicles (with any shortfall in insurance proceeds to be paid by the Funding Recipient); and (ii) the balance of any insurance proceeds, if any, to Funding Recipient.

Section 1.02. Workers' Compensation, Employer's Liability, and Disability and Paid Family Leave Benefits Insurance. At all times during the Performance Term, Funding Recipient shall maintain Workers' Compensation, Employer's Liability, and New York Disability and Paid Family Leave Benefits Insurance in statutorily required amounts and otherwise in compliance with applicable Legal Requirements covering employees of Funding Recipient who perform any activity in connection with this Agreement.

Section 1.03. Proof of Insurance.

(a) Prior to the commencement of the Performance Term, Funding Recipient shall provide or cause to be provided to the City proof of insurance evidencing the insurance required by Section 1.01 herein, as follows: (i) a certificate of insurance in a form reasonably satisfactory to the City accompanied by a completed certification of insurance broker or agent (in the form included in this Exhibit), or (ii) a certified copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

(b) Prior to the commencement of the Performance Term, Funding Recipient shall provide or cause to be provided to the City proof of insurance evidencing the insurance required by Section 1.02 herein in the form provided below, as applicable. ACORD forms are not acceptable proof of such insurance.

- (i) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
- (ii) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
- (iii) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
- (iv) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
- (v) Form DB-120.1, *Certificate of Disability and Paid Family Leave Benefits Insurance*;
- (vi) Form DB-155, *Certificate of Disability and Paid Family Leave Benefits Self-Insurance*;
- (vii) Form CE-200 – *Affidavit of Exemption*;
- (viii) Other forms approved by the New York State Workers' Compensation Board; or
- (ix) Other proof of insurance in a form acceptable to the City.

(c) At any time during the Performance Term, at the City's request, Funding Recipient shall provide (i) proof of insurance confirming renewals or new policies of insurance required under this Exhibit, and (ii) a copy of any policy required under this Exhibit.

Section 1.04. 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 herein. Funding Recipient shall perform, satisfy and comply with all conditions, provisions and requirements of all such insurance policy or policies.

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability and Paid Family Leave Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

EXHIBIT C

OPINION OF COUNSEL

(SEPARATE ATTACHMENT)

[The Opinion of Counsel letter must be on the attorney's letterhead.]

, 20__

The City of New York
Department of Design and Construction
30-30 Thomson Avenue
Long Island City, New York 11101-4132

Re: Funding Agreement (the "**Funding Agreement**") dated as of _____
____, 20__ between The City of New York (the "**City**") and
_____ ("**Funding Recipient**") and Security
Agreement ("**Security Agreement**") dated as of _____, 20__, by
Funding Recipient in favor of the City of New York ("**City**")

Ladies and Gentlemen:

We have acted as counsel for Funding Recipient, a New York not-for-profit corporation, in connection with the execution and delivery of the Funding Agreement and the Security Agreement and related agreements and transactions and, in so acting, we have been asked to render this opinion. Defined terms utilized and not otherwise defined herein shall have the meaning assigned to such terms in the Funding Agreement and Security Agreement.

In delivering this opinion, we have examined the organizational documents of Funding Recipient, including, but not limited to, Funding Recipient's certificate of incorporation and by-laws, a certificate of good standing issued by the Secretary of State of the State of New York, as well as resolutions of the Board of Directors of Funding Recipient authorizing the execution and delivery of the Funding Agreement and the Security Agreement by Funding Recipient and the performance by Funding Recipient of its obligations under each thereof. In addition, we have examined such other certificates of public officials, such other documents and matters of law as we have deemed necessary under the circumstances. In such examination, we have assumed the genuineness of all signatures by persons other than representatives of Funding Recipient 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. Funding Recipient 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. Funding Recipient has the power and authority to execute and deliver the Funding Agreement and the Security Agreement and the related documents and to perform and do all acts to be performed by it under each thereof.
3. The execution and delivery of the Funding Agreement and the Security Agreement and the related documents have been duly authorized by all

necessary corporate action on the part of Funding Recipient and do not and will not: (a) contravene the certificate of incorporation or by-laws of Funding Recipient; (b) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Funding Recipient, except such filings, registrations, consents and approvals as have been made and/or secured by Funding Recipient and are in effect on the date of this Agreement or (c) cause Funding Recipient to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award.

4. The Agreement and the Security Agreement and the related documents constitute legal, valid and binding obligations of Funding Recipient enforceable against Funding Recipient in accordance with their respective terms.

The foregoing opinions are subject to the following qualifications:

- (a) No person or entity other than the City and its successors or their 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 Funding Recipient 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 D

EQUAL EMPLOYMENT OPPORTUNITY

(SEPARATE ATTACHMENT)

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

1. Disapproval of the contractor; and/or

2. Suspension or termination of the Agreement; and/or
3. Declaring the contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the contracting agency declaring the contractor to be non-responsible.

D. The contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each 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. A supplier of unfinished products to the contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The contractor further agrees that it will refrain from entering into any subcontract or modification thereof 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. A supplier of unfinished products to the contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

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

EXHIBIT E

INVESTIGATIONS

(SEPARATE ATTACHMENT)

INVESTIGATIONS; REFUSAL TO TESTIFY

Section 1.01. Cooperation. Funding Recipient shall cooperate fully and faithfully with any investigation, audit, or inquiry conducted by a State or City Governmental 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 1.02. Hearings.

(a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental 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 City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; 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 or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

Section 1.03. Adjournments of Hearing, Etc. If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 1.05 below without the City incurring any penalty or damages for delay or otherwise.

Section 1.04. 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 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; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid to the City.

Section 1.05. Criteria for Determination. The Commissioner or agency head shall consider or address in reaching his or her 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 that 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 1.04 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 1.02 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 potential adverse impact such a penalty would have on such person or entity.

Section 1.06. Definitions. For the purposes of this Exhibit, 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 1.07. Failure to Report Solicitations. In addition to, and notwithstanding any other provision of this Agreement, the Commissioner or agency head may, in his or her sole discretion, terminate this Agreement upon not less than three (3) days written notice in the event Funding Recipient fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of New York or other person or entity for any purpose that may be related to the purchase of City-Funded Vehicles or obtaining of this Agreement by Funding Recipient, or affecting the performance of this Agreement.

EXHIBIT F

FORM OF TAX AFFIRMATION

(SEPARATE ATTACHMENT)

TAX AFFIRMATION

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

SIGNATURE OF FUNDING RECIPIENT

Full Name (Company)

Address

EIN

By: _____

Name:

Title:

Subscribed and sworn to before me

This _____ **day of** _____ **20** _____

Notary Public

Commission Expires: _____ **20** _____

SCHEDULE I

ELECTRONIC FUNDS TRANSFER VENDOR PAYMENT ENROLLMENT FORM

(SEPARATE ATTACHMENT)



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

Mail to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or **Fax to:** EFT at 212-361-7058.

INSTRUCTIONS: Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. **Note: Your application cannot be processed without this documentation.** See the reverse side for more information and instructions.

SECTION I - VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)		<input type="text"/>
2. VENDOR NAME (AS IT APPEARS ON W-9 FORM):		
<input type="text"/>		
3. VENDOR'S ADDRESS (FOR EFT ENROLLMENT PURPOSES):		
<input type="text"/>		
4. VENDOR'S EMAIL ADDRESS:		
<input type="text"/>		
5. CONTACT PERSON NAME:	CONTACT PERSON TELEPHONE NUMBER:	
<input type="text"/>	<input type="text"/>	

SECTION II - FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:	2. ACCOUNT NAME:	
<input type="text"/>	<input type="text"/>	
3. BANK NAME :		
<input type="text"/>		
4. BANK BRANCH ADDRESS:		
<input type="text"/>		
5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)	<input type="text"/>	6. ACCOUNT TYPE - MUST BE EITHER CHECKING OR SAVINGS: (CHECK ONE BOX ONLY) <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS
7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:		TELEPHONE NUMBER:
<input type="text"/>		<input type="text"/>

SECTION III - VENDOR SIGNATURE

<input type="text"/>	<input type="text"/>	<input type="text"/>
VENDOR SIGNATURE	PRINT NAME	DATE

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

GENERAL INSTRUCTIONS

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to: NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or Fax to: EFT at 212-361-7058.

SECTION I - VENDOR INFORMATION

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

SECTION II - FINANCIAL INSTITUTION INFORMATION

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

SECTION III - VENDOR SIGNATURE

Sign and date where indicated.

SCHEDULE II

NOTICE OF LIEN

(SEPARATE ATTACHMENT)



NOTICE OF LIEN - CHARGE ACCOUNT CUSTOMER

www.nysdmv.com

All information (other than signature) must be typed. Use caution when entering Vehicle, Hull or Manufactured Home ID number. Liens will not be recorded if information is illegible, incorrect or incomplete.

VEHICLE/BOAT/MANUFACTURED HOME INFORMATION			Your DMV Charge Account Number: _____
Identification Number		This is a: <input type="checkbox"/> Vehicle <input type="checkbox"/> Boat <input type="checkbox"/> Trailer <input type="checkbox"/> Manufactured home	
Year	Make	Body Type/Hull	Registration/Plate No. of Borrower, if any

OWNER INFORMATION		
Owner's Last Name	First	M.I.
Owner's Last Name	First	M.I.
Street Address (including Apt. No.)		
City	State	Zip Code <input type="checkbox"/> Check here if this is a new address

NOTE: Lien will be recorded only if the name(s) listed as the owner(s) is **EXACTLY** the same as the owner(s) recorded, or to be recorded, on the Certificate of Title. If a Certificate of Title has not been issued to this borrower, print the name as it appears on the driver license.

OWNER'S STATEMENT: I understand that the lienholder will send this notice to the DEPARTMENT OF MOTOR VEHICLES. If a title was previously issued in my name for this vehicle, boat, trailer or manufactured home, I gave it to the lienholder to be sent to DMV with this notice. I understand that a new Certificate of Title, showing the lienholder's name, will be mailed to me.

OWNER(S): SIGN HERE: _____ Date _____
(Must be an original signature. If a POA is used, a copy of the POA must be attached.) (Must be an original signature. If a POA is used, a copy of the POA must be attached.)

If signing for a corporation, print your name and title: _____ (Name) _____ (Title)

LIEN INFORMATION	Lien Filing Code (assigned by DMV: enter only if a code has been assigned to you or your company)
Lienholder's Name	
Lienholder's Name (continued)	
Street Address	
City	State Zip Code

This notice authorizes the Department of Motor Vehicles to disclose (or otherwise make available) information about the lienholder obtained by the department in connection with this record.

(Lienholder's Signature—Must be an original signature or a facsimile stamp) Date of Security Agreement _____

Has a NY Certificate of Title been issued to this borrower? YES NO *IF YES, ATTACH TITLE.*

LIENHOLDER: Mail this form and the owner's title (if issued) to:

TITLE BUREAU, NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES PO BOX 2604, ALBANY, NY 12220-0604

You can verify online if a lien was recorded or if a title certificate was issued.

Go to the Lien/Title Certificate Status page at the DMV web site: www.nysdmv.com/titlestat/default.html



DO NOT DETACH THIS RECEIPT

YOUR DMV CHARGE ACCOUNT NUMBER: _____

PLEASE TYPE LIEN FILING CODE, AND NAME AND ADDRESS OF THE ACCOUNT TO BE CHARGED:

Lien Filing Code:	Vehicle Identification Number (VIN):
Account Name	
Street Address (including Apt. No.)	
City or Town	State Zip Code

SCHEDULE III

INVENTORY

(SEPARATE ATTACHMENT)

INVENTORY OF CITY-FUNDED VEHICLE(S)

Name of Funding Recipient: _____

Funding Agreement Dated as of: _____

Vehicle Identification Number (VIN)	Vehicle Manufacturer & Model Year	Total Cost of Vehicle	Date Reimbursed By City	Date of First Use	Location of Vehicle When Not in Use

Signature of authorized representative _____

Name (Print) _____

Title (Print) _____

Date _____

SCHEDULE IV

COMPLIANCE REPORT

(SEPARATE ATTACHMENT)

**COMPLIANCE REPORT FOR VEHICLE(S) FUNDED WITH NEW YORK CITY CAPITAL
BUDGET MONIES**

Funding Recipient Information:

Name: _____

Address: _____

Funding Agreement Information:

Managing Agency: _____

Date: _____

City Purpose Covenant Performance Term (No. of years): _____

Date of Final Disbursement of the Funding: Date: _____

Instructions: An authorized officer of the Funding Recipient should read and complete this Compliance Report with respect to the Funding Recipient's compliance with all Legal Requirements in connection with the Funding received from the City of New York's (the "City's) Capital Budget for the reimbursement of City-Funded Vehicle(s). Where applicable, please insert an explanation in the provided field or provide a supplemental attachment. Defined terms utilized and not otherwise defined herein shall have the meanings assigned to such terms in the Funding Agreement and the Security Agreement. *The submission of each Compliance Report to the City constitutes a representation and warranty that all information contained herein is timely, complete and correct. Any false, incomplete or misleading statements or information submitted herein may result in termination of the Funding or other legal remedies permitted under the Funding Agreement and deemed appropriate by the City.*

The first Compliance Report is due within eighteen (18) months of the date that the Funding Agreement has been registered by the Comptroller. Subsequent annual Compliance Reports are due on each anniversary thereof until and including the first such anniversary occurring after the last year of the Performance Term. Please mail the completed Compliance Reports and all attachments to the New York City Office of Management and Budget ("OMB") at: *Counsel's Office, Compliance Officer, New York City Office of Management and Budget, 255 Greenwich Street, New York, NY 10007.*

FUNDING RECIPIENT'S CERTIFICATION: I, _____, am an authorized officer of the Funding Recipient, and I certify as to the truthfulness of the responses provided herein.

1) Has Funding Recipient

(a) Provided to the City a completed Notice of Lien accompanied by a corresponding Certificate of Title for the City-Funded Vehicle(s)? Yes No

If No, Funding Recipient must take immediate action to notify and grant the City a first priority and only lien on the City-Funded Vehicle(s).

(b) (i) Provided to the City a copy of the Inventory Report and (ii) affixed to each City-Funded Vehicle a label or tag in accordance with the Funding Agreement? Yes No

If No, Funding Recipient must attach a copy of the Inventory Report and/or affix Label(s) and/or Tag(s) to each City-Funded Vehicle.

2) Are all City-Funded Vehicle(s) parked when not in use at the addresses set forth in Funding Agreement and the Security Agreement? Yes No

If No, please list the current address(es) in the space below:

- 3) In the space below, please (i) describe in detail how the City-Funded Vehicle(s) have been used by the Funding Recipient in conformance with the City Purpose Covenant during the preceding 12-month period, (ii) identify any and all additional or alternative uses, activities, programs and services beyond those set forth in the City Purpose Covenant, (iii) identify any operators of the City-Funded Vehicle(s) other than the Funding Recipient, (iv) identify the number of staff and persons served, and (v) list the number of days of such use during the preceding 12-month period, days used during the average week and regular hours of operation.

- 4) Does the Funding Recipient provide services that are available to all residents of the City regardless of race, religion, creed, color, national origin, sex, age, disability, marital status, sexual orientation or political affiliation? **Yes** **No**

If Yes or No, please explain.

- 5) (a) Does the Funding Recipient offer, sponsor or provide any religious or sectarian activities or otherwise plan and organize such activities? **Yes** **No**
- (b) If applicable, was such religious or sectarian activity reviewed by the City prior to the execution of the Funding Agreement? **Yes** **No**
- (c) If applicable, please describe such religious or sectarian activities.

- (d) If applicable, is any City-Funded Vehicle(s) used directly or indirectly to support such activities? **Yes** **No** If Yes, please explain in detail.

- 6) Has Funding Recipient
- (a) Transferred ownership or control, and/or created, permitted or caused to exist any lien against any City-Funded Vehicle(s)? **Yes** **No**
- (b) Altered, disposed and/or exchanged any City-Funded Vehicle(s)? **Yes** **No**
- 7) Has any of the City-Funded Vehicle(s) been lost, damaged or stolen? **Yes** **No**
- 8) If Yes is the response to (6) or (7) above, please (i) list all City-Funded Vehicle(s) that have been encumbered by a lien and/or transferred, altered, lost, damaged or disposed of since disbursement of the Funding, (ii) list any vehicle(s) acquired to replace the original City-Funded Vehicle(s), and (iii) identify the date and describe the event that resulted in the encumbrance, damage, loss or replacement of any of the City-Funded Vehicle(s).

9) Funding Recipient (i) is a not-for-profit corporation in good standing under the laws of the State of New York, (ii) has not experienced a material adverse change in the financial condition of its business or operations and, (iii) is not in default or breach of its obligations under any written agreement with the City:

Yes No

If No, please explain.

10) Has Funding Recipient maintained the required insurance coverage for the City-Funded Vehicle(s) as mandated by the Funding Agreement? Yes No

If Yes or No, please explain.

11) For City-Funded Vehicle(s), Funding Recipient hereby certifies that (i) the registration with DMV is in full force and effect and (ii) the requisite annual DMV inspections have been conducted within the past twelve (12) months of the Performance Term. **Yes** **No**

12) Optional - additional relevant information: Provide in the space below any information that Funding Recipient would like the City to take into consideration:

(Print Name of Authorized Officer of Funding Recipient)

(Title)

(Signature)

(Date)

SCHEDULE V

EMERGENCY CONTRACEPTION PROVISIONS

(SEPARATE ATTACHMENT)

Pursuant to Section 6-125 of the New York City Administrative Code, the Contractor, a facility operating pursuant to article 28 of the New York Public Health Law which provides emergency medical care, agrees as follows:

A. The Contractor agrees to inform rape victims presenting to its emergency department of the availability of emergency contraception and, if requested, to administer, if medically appropriate, such contraception in a timely manner. "Rape victim" means any female person who alleges or is alleged to have been raped and presents to a hospital. "Emergency contraception" shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United State Food and Drug Administration.

B. The Contractor agrees to provide the New York City Department of Health and Mental Hygiene, on an annual basis, a report indicating the following information with respect to each reporting period: (i) the number of rape victims treated in such hospital's emergency department; (ii) the number of rape victims treated in such hospital's emergency department which were offered emergency contraception; (iii) the number of rape victims treated in such hospital's emergency department for whom the administration of emergency contraception was not medically indicated and a brief explanation of the contraindication; and (iv) the number of times emergency contraception was accepted or declined by a rape victim treated in such hospital's emergency department.

C. The Contractor agrees to provide the New York City Department of Health and Mental Hygiene a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to section 405.19 of title 10 of the codes, rules and regulations of the State of New York.