

EXHIBIT A

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
NEW YORK CITY ANIMAL CARE AND CONTROL PROGRAM
CONTRACT

PIN: 19AA003401R0X00

EPIN: 81618N0003001

AGREEMENT dated as of September 1, 2018 by and between the **CITY OF NEW YORK** ("City"), acting by and through its **Department of Health and Mental Hygiene**, having its principal office located at 42-09 28th Street Long Island City, New York 11101-4132 (the "Department"), and Animal Care and Control of New York City, Inc., doing business as Animal Care Centers of NYC, ("ACC" or "Contractor"), a New York not-for-profit corporation, having its principal office at 11 Park Place, Suite 805, New York, New York 10007

WITNESSETH

WHEREAS, the Department has jurisdiction under the City Charter to regulate all matters affecting health within the City, including the control of disease and conditions hazardous to life and health, and the abatement of nuisances affecting or likely to affect public health; and

WHEREAS, Sections 389(b) and 1043(a) of the New York City Charter provides rule making authority for the Commissioner of the Department, as the Commissioner of a Mayoral Agency, to adopt rules and regulations to carry out the powers and duties delegated to the agency head or the agency pursuant to state law; and

WHEREAS, pursuant to authorization pursuant to § 107 of the Agriculture and Markets Law of the State of New York, which itself is the codification of Chapter 115 of the Laws of 1894, the New York City Dog License Law, Chapter 8: Animal Shelters and Sterilization Act of the New York City Administrative Code, §§ 17-802 *et seq.*, was adopted; and Articles 161 *et seq.* of the Health Code were promulgated, and such statutory and rule making authority, as amended, provide the City of New York, acting through the Department, the authority to enter into this Agreement, and under such authority, the City

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is authorized to maintain, in each Borough, shelters or facilities for animals and has designated the Department as the agency to exercise such authority and powers; and

WHEREAS, within the Department there exists the Bureau of Veterinary and Pest Control (the "Bureau") under the direction of the Commissioner's designee having the power and duty to administer Departmental programs relating to the impact of animals on public health, including, but not limited to, control of stray animals, seizing and control of dangerous and/or prohibited animals, issuing dog licenses and collecting fees therefor, the surveillance of animal bites, the surveillance of rabies, the investigation of all animal related diseases; and

WHEREAS, ACC, a 501(c)(3) corporation, formerly known as The Center for Animal Care and Control, Inc., is a corporation formed pursuant to Section 201 of the Not-for-Profit Corporations Law of the Laws of the State of New York, in part for the public purposes of seizing animals deemed to be a threat to the public health, providing and operating facilities to shelter, hold, examine, test, treat, spay, neuter, place for adoption, assure humane care and disposition of and otherwise control animals which ACC or the City has seized or accepted for shelter; and

WHEREAS, ACC first entered into a contract with the City, acting through the Department, that took effect on January 1, 1994, when it replaced the ASPCA as the provider of animal care and control services, and ACC, under its former and current name has been satisfactorily providing such animal care and control services continuously thereafter for the City, with oversight by the Department, acting by and through the Bureau; and

WHEREAS, in 2009, the City of New York, acting by and through its Department (the "Department"), through its Bureau of Veterinary and Pest Control, Office of Veterinary Public Health Services issued a negotiated acquisition for a vendor to provide and operate animal admission facilities to shelter, assure humane care and disposition, hold, examine, test, treat, spay/neuter, microchip, place for adoption, or otherwise control animals, which the City had seized or accepted at shelters; and

WHEREAS, Animal Care and Control of New York City, Inc. was selected as the entity with the best demonstrated organizational capability to implement the services required to implement the animal care and control services required to meet the needs of the City and the Department entered into an Agreement, as a negotiated acquisition pursuant to and in accordance with PPB Section 3-04(b)(2)(iii), for a term of five years, from July 1, 2010 through June 30, 2015, which was renewed by a Renewal Agreement, which was in effect for a period from July 1, 2015, which has been amended not less than four times to date of this Agreement, such Renewal Agreement, as amended is referred to herein as the "First Renewal Agreement", and under its First Renewal Agreement and the agreement preceding

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such First Renewal Agreement, ACC has provided animal care and control services continuously since 2010; and

WHEREAS, said First Renewal Agreement was twice amended and once renewed for the first of the two optional renewal periods to expand and enhance the type and range of services provided by ACC and such First Renewal Agreement, as renewed for an additional term of nine months(the “Second Renewal Agreement), is in full force and effect for the interim period between the end of the First Renewal Agreement, as amended, and such Second Renewal Agreement, entered into on the same terms and conditions as the First Renewal Agreement, as amended and extended, shall be superseded by this Agreement, except as it may be otherwise specifically provided herein; and

WHEREAS, the City has determined that it is in its best interests to expand its animal shelter system capacity and to that end has determined that it desires to have ACC operate two additional full service animal shelters in the Boroughs which currently do not have full service shelters, namely the Borough of Queens, which site with or without improvements will be purchased by ACC, and to the extent it needs improvements, either renovation or new construction, funding will be provided pursuant to the terms and conditions of this Agreement, and an additional full service animal shelter in the Borough of the Bronx, which is currently in the planning phase and is currently intended to be built by the City’s Department of Design and Construction on City-owned land located in the Bronx, subject to all City and Department legal and programmatic requirements; and

WHEREAS, the Department hereby enters into this Agreement with ACC through a negotiated acquisition method of procurement for a term of approximately thirty-four years, commencing as of the date first set forth hereinabove, such term providing the financial stability for ACC needed for the financing of a new Queens Full Service Shelter; and

WHEREAS, ACC represents that it has previously performed satisfactory similar services of the type to be performed hereunder for the Department and that it is ready, willing and able to perform such services hereunder;

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

**TERM, RENEWAL, SCOPE OF SERVICES, FINANCIAL PROVISIONS,
AND OTHER MISCELLANEOUS PROVISIONS AND SPECIFICATIONS**

I. DEFINITIONS

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- A. The terms defined in this subsection A of this Agreement have the following meanings for the purposes of interpreting this Agreement:
- (1) "ACC" means a certain New York not-for-profit corporation, registered by the New York Secretary of State as Animal Care and Control of New York City, Inc.
 - (2) "Admissions Facility" means a partial service shelter, which provides only admission services for animals, which with regard to the Admissions Facilities located in the Boroughs of Queens and the Bronx are anticipated to be replaced during the term with Full Service Shelters to be operated by ACC, and may include surrender prevention services, subject to available resources to the extent that such surrender prevention services do not limit Facilities' space allocations and availability of Budget allocations for the primary function of admissions at such facilities;
 - (3) "Adoption" means the delivery by ACC to any natural person eighteen years of age or older, for the limited purpose of harboring as a pet, a homeless, lost, stray, abandoned, seized, surrendered, or unwanted animal and/or the delivery by ACC to an Animal Rescue Group;
 - (4) "Animal Rescue Group" means a duly incorporated not-for-profit organization that accepts homeless, lost, stray, abandoned, seized, surrendered or unwanted animals from an animal shelter or other place and attempts to find homes for, and promote adoption of, such animals by the general public; or sanctuaries or other entities, approved by the Department on an animal by animal basis in cases of animals that constitute wild animals or are animals that are otherwise prohibited as pets by applicable provisions of the Health Code of the City of New York;
 - (5) "Charter" means the New York City Charter;
 - (6) "Commencement Date" means the date on which this Agreement is effective, which shall be the later to occur of either September 1, 2018, or the first day of the month following the month in which this Agreement is registered pursuant to §328 of Chapter 13 of the Charter;
 - (7) "Construction Financing Lender" means the financial institution or institutions acceptable to the City which provide construction financing for the construction of the new Queens Site until such time as the financing has been converted to permanent financing for the Queens Site acquisition and improvements, and shall include the institutional successors and assigns of the initial named Construction Financing Lender(s);

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- (8) "Construction Loan" shall mean a construction loan given by the Construction Financing Lender to ACC for the construction of improvements on the Queens Site;
- (9) "Days" or "days" means calendar days unless specifically noted to mean business days.
- (10) "Debt Service Payments" or "Required Debt Service Payments" shall mean the payments required to be paid to the Lenders in connection with the acquisition, construction and permanent financing documents for the Queens Site that have been approved by the Department in accordance with the provisions of this Agreement, as allocated from capital funding by the City for such purpose in the Budget (Exhibit B);
- (11) "Department" means the Department of Health and Mental Hygiene of the City of New York;
- (12) "Equipment" means a tangible item, the purchase price of which has been or will be invoiced for direct cost reimbursement pursuant to this Agreement and is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of Program Services. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use, but does include special fixtures, such as cages, added to ACC vehicles to outfit the vehicle for the care and control of animals to be transported. Equipment does not include material, real property, special test equipment or special tooling. Equipment for which the purchase price has been reimbursed pursuant to this Agreement must not be disposed or taken out of use without following the salvage rules for such equipment as established by the City;
- (13) "Full Service Shelter" means an animal shelter operated by ACC pursuant to the terms and conditions of this Agreement, which provides all the services required to be provided by ACC pursuant to the terms and conditions of this Agreement;
- (14) "Fiscal Year" or "FY" means the fiscal year of the City of New York which starts on July 1st and ends on June 30th;
- (15) "Lender" or "Lenders" means, as applicable in the context in which such terms are used herein, pertaining to either or both construction loan lenders and the permanent financing lenders, to whom or which the repayment, with or without interest, of construction and permanent financing paid-out or to

be paid out in accordance with the loan documents by such lenders for use in the acquisition, construction and permanent refinancing of the construction financing and permanent financing loans for the new Queens Site;

- (16) **“Maximum Reimbursable Amount” or “MRA” means the amount allocated in the Budget (Exhibit B) hereunder for each Fiscal Year or for all Fiscal Years in this Agreement, as determined by the context;**
- (17) **“Monthly” shall mean a calendar month period, commencing on the first day of each calendar month which occurs during the Term of this Agreement and ending on the last day of each calendar month which occurs during the term of this Agreement, or such partial month as may occur during the first and last calendar months of the Term;**
- (18) **“Operating Budget” means all expenses for which City Tax Levy funds are allocated pursuant to Exhibit B (the “Budget”), excepting only the expenses allocated for City Capital expenses in the Budget for the acquisition, development, Required Debt Service, equipment, fixtures, and vehicles funded hereunder;**
- (19) **“Parties” means both ACC and the Department;**
- (20) **“Permanent Lender” and “Permanent Lenders” means one or more financial institutions acceptable to the Department, which loan monies to ACC for a term acceptable to DOHMH for the purpose of pay-off of the monies due on pay-off of the Construction Loan(s), and includes the institutional successors and assigns of such Permanent Lender(s);**
- (21) **“Program” and sometimes, “Program Services” has the meaning set forth in Article III, Section A of the body of this Agreement, as it may be amended during the term of this Agreement;**
- (22) **“Program Funds” means funds provided, anticipated, or specified under the Operating Budget to be reimbursed to ACC for its operating costs in providing the services to be provided by ACC under this Agreement;**
- (23) **“Program Budget” means the itemized budget submitted each Month in accordance with Article IV, Section A, subsection (2) of the Body of this Agreement itemized by consulting services, construction work, property acquisitions, equipment, and other Program expenses as contained in the Budget, Exhibit B to this Agreement;**

- (24) “Quarter” means each three month period beginning on July 1 and ending on September 30, beginning on October 1 and ending on December 31, beginning on January 1 and ending on March 31, beginning on April 1 and ending on June 30 of every Fiscal Year;
- (25) “Queens Full Service Shelter” means the animal shelter, located at 151 Woodward Avenue & 1902 Flushing Avenue, Ridgewood, New York 11385 (Block 3376, Lots #1 and 7) in the Borough of Queens (or in the alternative a yet to be determined location in the Borough of Queens) that is intended to be purchased and operated by ACC pursuant to this Agreement;
- (26) “Queens Site” means the real property and the improvements thereon for the Queens Full Service Shelter that the Parties anticipate putting into operation during the term of this Agreement with funding allocated for that purpose pursuant to allocations therefor contained in the Budget (Exhibit B);
- (27) “Required Debt Service Payments” means the payments payable by ACC to the financial institution(s) which lend money to ACC for both the acquisition and improvement of the Queens Site that is to be purchased and outfitted pursuant to this Agreement, which payments are included in the MRA for the Budget for Site Acquisition, Development and such Initial Outfitting that is included in the permanent financing for the Queens Full Service Shelter;
- (28) The term “subcontractor” or “Subcontractor” means any person, consultant, firm or corporation (including consultants and independent contractors) who or which contracts with Contractor or with its subcontractors to provide services or both services and goods in connection with this Agreement. This term does not include Contractor’s officers, employees and volunteers and Animal Rescue Groups (in their capacity of finding homes for animals transferred to their custody); and
- (29) “State” means the State of New York.

II. TERM, RENEWALS, AND TERMINATION

A. Term.

The term of this Agreement shall commence and be effective as of the Commencement Date and shall expire on June 30, 2052. This Agreement shall be

deemed executory only to the extent of the monies appropriated and made available for the purpose of this Agreement, and no liability on account thereof shall be incurred by the City beyond the amount of such monies, except that any and all obligations of the City with respect to the Required Debt Service Payments shall not be subject to such appropriations. It is understood that neither this Agreement, nor any representation by any public employee or officer, creates any legal or moral obligation to request, appropriate or make available additional monies for the purpose of the Agreement. If, at the expiration or other termination of the term of this Agreement, there remains an obligation under the loan documents for the construction or permanent financing of the Queens Full-Service Shelter for which Required Debt Service Payments are still outstanding and unpaid, then the obligations of the City pursuant to this Agreement to pay such Required Debt Service Payments shall be automatically extended until all remaining obligations for such Required Debt Service Payments pursuant to City approved loan documents have been satisfied, subject to the carry-over of Required Debt Service Payment funding allocated under the Budget to this Agreement for the period of such extension, or until the Parties enter into a new agreement that, by its terms, expressly supersedes this agreement.

B. First Renewal Agreements Superseded.

It is understood that all other agreements between the Parties with respect to the subject matter of this Agreement, excepting only a single agreement for the purchase of a replacement vehicle for ACC, where the replacement was needed due to loss of the vehicle, shall be superseded by this Agreement, effective as of the date of registration of this Agreement, subject to its registration with the Comptroller of the City of New York, and all obligations between the Parties shall be determined solely by this Agreement, except as to the procurement of twelve vehicles pursuant to the Second Amendment to the First Renewal Agreement, effective as of July 1, 2012, which procurement shall be governed by said Second Amendment until the Commencement Date of this Agreement, and thereafter by this Agreement, except as to provisions of the Second Amendment with respect to procurement and use of the vehicles and the conditions of funding of said Second Amendment, which are hereby deemed to survive and continue to apply to such vehicles and their procurement and use. Specifically, the First Renewal Agreement between the City of New York, acting through the Department for a term of ten years, effective as of the first day of July, 2015, as amended to date of the registration of this Agreement, is hereby deemed, as renewed and amended, superseded by this Agreement, and the Second Renewal Agreement, commencing as of July 1, 2018, which is hereby deemed to be terminated and superseded as of the last date of the month in which this Agreement is registered with the Office of the Comptroller of the City of New York pursuant to Chapter 13, §328 of the New York City Charter, and replaced by this Agreement as of the first day of the month following. This Agreement is contractual in nature and does not confer upon ACC

any right, title or interest whatsoever in, or to, any City-owned or occupied property in which the Program Services are performed, provided, however, that the Queens Full Service Shelter will be located at 151 Woodward Avenue & 1902 Flushing Avenue, Ridgewood, New York 11385 (Block 3376, Lots #1 and 7), (or in the alternative at a yet to be determined location in the Borough of Queens) after said site is purchased by ACC. The Full Service Shelter will be owned and operated by ACC as more fully set forth herein and used by ACC for the purpose of the performance of the Program therein.

C. Future Funding.

Since the period of performance contemplated by this Agreement involves performance by ACC in a subsequent Fiscal Year(s), funding for this Agreement is subject to the appropriation of funds for such subsequent City Fiscal Year(s), except as to Required Debt Service Payment obligations, which shall be deemed to be a continuing obligation of the City to the extent funds are allocated for such purpose in the Budget hereto. ACC also understands that the Department is under no obligation to continue its funding after the expiration of the term of this Agreement.

D. Termination

- (1) If, during the term of this Agreement, reductions in City Funding are made pursuant to Section 10.02 of Appendix A to this Agreement, which would reduce funding and/or level of Program Services, then, as soon as is practicable after DOHMH advises ACC of such funding reduction, the Parties will consult with one another to make decisions as to the reduction or elimination of ACC programs, Program Services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours; and corresponding reductions in the Budget of this Agreement and in the total amount payable under this Agreement that correspond to such budgetary reductions. In such consultations, DOHMH may designate certain programs and service components to be performed under this Agreement as essential functions that must be maintained because the Department designates such functions as required by applicable law, in which event the Program Services so designated as essential services will continue to be performed and the Parties will work cooperatively to realize savings in other areas for that purpose. Furthermore, no reductions will be required in the Debt Service Payments payable hereunder.
- (2) This Agreement is a cost reimbursement agreement, and therefore, it is acknowledged and agreed that absent sustained funding in the amounts allocated for such cost reimbursement to ACC for its Operating Expenses in accordance with Budget allocations, some Program Services must either be curtailed or cut as a result of allocating funding reductions, and therefore, after the percentage or amount of the reduction in funding is known by ACC, ACC

will propose to the Department in writing the allocation of such funding reductions in order to maximize the performance of essential services, while realizing the budgetary savings needed for such reductions. The Department will either approve the suggested budgetary reductions and reallocations proposed by ACC, or will make alternate suggestions. The process will continue with proposals and counterproposals until the Parties are agreed, but in any event will conclude within the time allocated pursuant to subsection B of Section 10.02 in Appendix A. The schedule for such exchange of proposals and concomitant discussions will take place in the time frame necessary to meet the deadline for such budgetary reductions.

- (3) If the Parties cannot come to agreement with regard to such budgetary reductions and related budget reallocations in time to meet the deadline for such reductions as set forth in the notice given to ACC, then the Department will have the option of making such budgetary reductions as it deems appropriate in order to continue to meet its essential service obligations under applicable law, and in response, ACC will have the option of continuing to provide Program Services, subject to such funding reductions or terminating this Agreement upon no less than 36 months prior written notice, which notice must propose a final termination date ending on the last day of a month. Such period of advance notice will enable the Department to initiate such procurement actions as it deems necessary to find a replacement contractor to provide all or part of the Program Services provided hereunder. ACC will cooperate in all respects with any transition to a new contractor and the orderly turn-over of properties to the new contractor's personnel for its operations. If requested, subject to compensation therefore in the amount of its reasonable costs therefor, through a budgetary modification, ACC's staff will provide training to the replacement contractor and will sign and deliver all documents required or necessary to ensure an orderly and timely transition to the replacement contractor, which shall include, without limitation, a transfer of ownership of the new Queens Full Service Shelter and/or Queens Site, as provided in this Agreement. Nothing in connection with such the exercise of such termination option, however, will affect the continuing obligation of the City to pay the Required Debt Service Payments. If termination occurs, this Agreement will be terminated in part, and will remain in effect with regard to Debt Service Payments, and the assignments of such Debt Service Payments by ACC to Lender(s).
- E. If either party terminates this Agreement, in whole or in part, pursuant to any provision contained herein, for any reason or for no reason, then, at the election of the Department and/or the City, (i) if such termination is prior to the purchase of the Queens Site, upon demand, ACC shall assign the Contract of Sale and Purchase of the Queens Site to the Department, or to its designated operator of the Program; (ii) if such termination is after the sale and during the design or construction phase

of the Queens Full Service Shelter, or during the operational phase of the Queens Full Service Shelter, then ACC shall facilitate the transfer of ownership and the project to the City, or to its designated operator of the Program, upon demand by the Department, and at a nominal price that includes the legal and other fees incurred by ACC to effect such transfer. Upon any termination, if there has been a sale of the airspace rights for the Queens Site, or any part thereof, the proceeds of such sale then remaining and unspent at the time of notice of termination of this Agreement shall be and remain the property of the City and shall be delivered to the City or its designated operator, upon the Department's demand therefor.

III. SCOPE OF SERVICES, NEW QUEENS FULL-SERVICE SHELTER, AND CAPITAL FUNDING FOR EQUIPMENT

A. General Description of Services

ACC shall provide animal care and control services under this Agreement, which shall include, but not be limited to, seizing animals deemed to be a threat to the public health, providing and operating facilities to reunite certain animals with owners, shelter, hold, examine, test, treat, spay, neuter, place for Adoption, assure humane care and disposition of, and otherwise control animals seized or accepted for shelter. The term "Program" or "Program Services" shall be deemed to refer to such services, all as more fully described in the Scope of Services attached hereto as Exhibit A. ACC shall provide all such Program Services and shall maintain its new Queens Full Service Shelter, when completed, to the satisfaction of the Department in the manner, and at the levels, set forth in the Scope of Services, annexed hereto and incorporated herein as Exhibit A and Exhibit D, all consistent with the Budget attached hereto and incorporated herein as Exhibit B.

B. Purchase of Premises for Queens Full Service Shelter and Initial Outfitting of the Queens Full Service Shelter

- (1) It is the intention of the City and ACC, that ACC shall, pursuant to this Agreement, purchase, own and operate an animal shelter for the performance of Program Services required pursuant to this Agreement in the Borough of Queens. ACC shall purchase a site in the Borough of Queens, which is pre-approved by the Department prior to entering into a contract for purchase, as a suitable site, using Budget and programmatic sufficiency criteria, for making appropriate improvements and operating a full-service Animal Care and Control shelter; shall make such improvements on the Queens Site, as are agreed upon by the Department and ACC, and operate a new Full Service Shelter for the purpose of delivering Program Services, all in accordance with the terms and conditions contained in this Agreement applicable thereto,

including, but not limited to "Exhibit C, Queens Full-Service Shelter Site Development by ACC."

- (2) ACC shall comply with Appendix INS, which relates to insurance requirements specific to the design and construction of the ACC shelter in Queens. ACC shall cause its prime construction contractor to maintain performance and payment bonds for the full value of the construction, unless such requirement is waived or modified by the Commissioner in writing.

(3) Property Insurance

- a. Upon completion of construction, ACC shall obtain and thereafter maintain comprehensive "All Risk" or "Special Perils" form property insurance covering the buildings, structures, equipment and fixtures located on the site of the Queens Full Service Shelter, whether existing at the time of obtaining such policy or whether built at any time before the expiration or other termination of this Agreement. Such insurance shall provide full Replacement Cost coverage for the Queens Full Service Shelter (without depreciation or obsolescence clause), and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall designate both ACC as Named Insured and the City, as Loss Payee as its interests may appear and the City, together with its officials and employees, as Additional Insured.
- b. The limit of such property insurance shall be no less than the full Replacement Cost of the improvements on the site of the Queens Full Service Shelter, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an "all risk" or "special perils form" insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Queens Full Service Shelter.
- c. In the event of any loss to the Queens Full Service Shelter, ACC shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. If following such loss event, the Department determines that ACC's operating costs for the Queens Full Service Shelter have decreased, the Department may reduce the Budget to this Agreement to the extent of such reduction for the duration of such reduction. With regard to losses for which coverage is afforded by the applicable policy or policies, ACC shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the maximum

possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims, or allow the City itself to adjust such claim. All insurance proceeds awarded to ACC as a result of claim(s) under the Property insurance policy shall be applied to repair damages and replace the contents of that were damaged.

- d. The Commissioner may waive or modify insurance requirements in this section III(B)(3), section V(C)(1)(m), Appendix INS, and Article 7 of Appendix A.

C. Equipment, including Vehicles, and Other Equipment Purchases with City Capital Funds

The terms and conditions with regard to purchases of equipment and vehicles with City Capital funding under the Second Amendment to the First Renewal Agreement (the "City Capital Funds"), as amended, will continue under this Agreement and the Funding and Security Agreements entered into for such past purchases will continue to be subject to both the terms and conditions of the purchase of such equipment under the First Renewal Agreement, excepting only funding for the vehicles and equipment for which funding is complete pursuant to the Second Amendment to the First Renewal Agreement and for which the useful life of such equipment has elapsed, and the disposition of such vehicles and equipment shall be determined in accordance with City rules and regulations applicable thereto. New City Capital Funded Purchases that occur after the effective date of this Agreement shall be subject to the provisions of this Agreement, and all such purchases shall be subject to the terms and conditions for purchases as are contained in Article III of the body of this Agreement, unless such equipment is included in the permanent financing as initial outfitting, ACC shall purchase, all in accordance with the terms and conditions contained in said Article III, all items of equipment, as included in the Budget for Equipment attached hereto (Exhibit B), as amended, including, without limitation, replacement vans that replace vans previously purchased under the Second Amendment to the First Renewal Agreement, subject to available funding therefor and other items of equipment, as approved by the Department for new purchases and the replacement or upgrading of existing equipment, as such equipment becomes obsolete or otherwise must be added or replaced, subject to available funding, as determined by the Department based on reports from ACC and budgeted funding available therefor. All Equipment to be purchased with City Capital Funds for use in the performance of the services that are to be performed under this Agreement shall be subject to the terms and conditions set forth in Subsection C of Article V (Maximum Payable Amount and Additional Payment Procedures and Related Requirements) to the body of this Agreement and shall be used solely to carry out such required services. Title to all equipment or other

property purchased at a price in excess of five thousand dollars (\$5,000) with funds obtained through this Agreement shall be in the name of ACC, unless otherwise directed by the Department. ACC shall properly maintain and keep in good repair all equipment acquired with funds obtained through this Agreement. ACC shall dispose of such equipment in the manner provided as directed by the Department, and shall maintain detailed records concerning such dispositions. At the Department's request, ACC must execute a UCC-1 to evidence the Department's interest in equipment purchased at a price in excess of twenty-five thousand dollars (\$25,000) and to enable the Department to perfect that interest by filing or otherwise.

D. Uses of Premises Owned, Operated by the City and/or Facilities for which Maintenance Expenses are Paid Hereunder.

1. The Parties recognize and acknowledge that the animal care and control activities funded under this Agreement are funded by the City for the purpose of engaging ACC to assist the Department to carry out its animal care and control responsibilities. Accordingly, the City is providing facilities owned and operated by the City, acting through the Department, and is providing funds which will allow ACC to acquire, develop and operate the new Queens Full Service Shelter, financed and equipped as provided hereunder, all to enable ACC to carry out the services on its part required to be performed hereunder. To ensure that the space allocated to the performance of Program Services is sufficient for the scope and volume of such activities in both the Full Service Shelters and Admissions Facilities and that the equipment and vehicles furnished under this Agreement are used for the purposes intended under this Agreement, ACC shall seek prior written approval of the Department for the conduct of activities other than the Program Services required hereunder in such Shelters and other facilities and approval of the space to be allotted to such other activities. Such approval must be obtained prior to commencing such other uses, prior to making any changes in the layout or space allocations to accommodate such other uses, and prior to any changes in such uses or allocation of additional space to such other uses that have previously been approved by the Department. In connection with an application to the Department seeking such approval, ACC will provide the Department with all relevant information about the scope and activities involved in such other uses and the space allocations requested for such use and other relevant information to enable the Department to fully consider each such specific request, and such approval will not be unreasonably withheld. Furthermore, there will be no subletting or other unauthorized use of such facilities by any third parties. As to the Queens Full Service Shelter, this subsection D will be deemed to survive the expiration or other termination of this Agreement.

2. ACC anticipates receiving the following types of revenues during the term of this Agreement and will report the amounts and use thereof in Monthly Sources and Uses Reports in accordance with subsection (12) of Section A of Article IV of this body of this Agreement, excepting only in kind donations of minimal value that are unconditionally donated by drop off at the shelters without any *quid pro quo* expectations, such as stuffed toys and towels that are not tracked by ACC that need not be reported to the Department on the Sources and Uses Report:
 - (a) Dog License Fees, which must be collected on behalf of the Department and remitted to the Department less the collection fee permitted to ACC, which is currently one dollar (\$1.00) per Dog License fee collected in accordance with subsection (8) of Section A of Article V of the body of this Agreement;
 - (b) Revenues from Program Services provided to the public, including ACC's collection of Adoption fees, spay/neuter waiver deposit forfeitures, drop-off/surrender fees, clinic fees and other types of fees that ACC, by agreement with the Department on various Program Services revenues ("Program Service Revenues"), which will be set at the cost of providing such services after ACC has conducted a cost analysis to determine the cost of providing such service, or set as less than the cost of providing such services, or, as no cost, all subject to prior approval of the Department. ACC shall have the discretion to provide fee waivers or discounts from set fees on a case by case basis without Department pre-approval;
 - (c) Gifts and donations from sources other than the Department, raised by ACC fundraising efforts ("Revenues from Gifts and Donations");
 - (d) Funding arising out of, or in connection with, ACC's acquisition and improvement of the Queens Site with the Queens Full Service Shelter, as described in Exhibit C to this Agreement, e.g., New Market Tax Credits, Sale of Air Rights, and specific grants and donations for the enhancement of the Queens Full Service Shelter (the "Queens Shelter Extra Funding").
3. ACC shall not accept a gift and/or donation from a "Banned private entity" as defined in the Department's Policy on Gifts and Donations Involving Private Corporate Entities (the "Policy"), unless and until the Department approves the specific donation or gift, and such limitation on acceptance shall extend to a foundation that is affiliated with such banned private entity. It is provided, however, that such limitation on the sources of gifts and donations shall not extend to any category of entity that is subject to interpretation on a case-by-case basis by the Contract Review Committee pursuant to the terms of the Policy, and it is further provided that in-kind gifts or donations of alcoholic

beverages for a specific ACC fundraising event are not subject to this provision or the Policy. The Department's approval with respect to such gifts or donations that would be otherwise prohibited under the Policy may be conditioned upon ACC limiting its attribution of the specific gift or donation, including prohibition of the placement of signage, logos, and naming on any part of the exterior or interior of an Admissions Facility or Full Service Shelter, or ACC vans, in ACC materials, publications media and/or on ACC's website. If the Policy should be replaced in whole or in part by a Department policy that covers the same subject matter, such new policy shall be deemed to be referred to in this provision in place of the current Policy. As used herein, "gifts" and "donations" shall have the meaning set forth in the Policy, and a "foundation affiliated with" shall mean the foundation is a private foundation that derives its grant making funds primarily from a profit-making business that meets the definition of a Banned private entity in the Policy.

4. ACC acknowledges that the primary service emphasis in all of the Full Service Shelters and Admissions Facilities must be and remain on the Program Services, and the ACC activities added in addition to the Program Services must be complementary to the Program Services. ACC agrees that promotional materials, branding and signage must be presented in such a way so as not to confuse the public and must deliver the message in a manner acceptable to the Department that the Program Services are the primary services being delivered at the Full Service Shelters and Admissions Facilities and that ACC services that are not Program Services are not being performed by the City of New York.
- E. No Double Funding. Reimbursement made under this Agreement shall not be used to provide for any item or service for which payment has already been made, or for which payment can be reasonably expected to be made, with respect to that item or service by third party payors, including, but not limited to grants or insurance policies, if that funder restricted or directed the use of its funds for a particular item. ACC shall submit a certified statement with its Final Invoice certifying that payments made by the Department under this Agreement did not duplicate reimbursement for items purchased by ACC or services which were received by ACC, or are reasonably expected to be received, from other sources that are for a restricted use. By way of example, ACC is not permitted to invoice the Department for an x-ray machine that was funded by a grant, but is permitted to apply unrestricted donations to such an enhancement of Program Services without any offset of the Medical PS or Medical OTPS budgets, provided that the items claimed for reimbursement by ACC in invoices submitted under this Agreement for reimbursement do not include any expenses funded or paid for, or for which payment can reasonably be expected to be made, by third parties.

F. Principal Office Lease. ACC may lease space at an adequate facility for use and occupancy as its corporate headquarters and offices, and the Department will pay ACC for its reasonable use and occupancy costs, subject to approval of the rent and other charges payable therefor by the Department. No later than eight months prior to the expiration of ACC's current lease, ACC will begin to confer with the Department on the office premises to be leased thereafter, and such premises will likewise be subject to approval of the programmatic sufficiency thereof, and approval of the rent payable therefor under this Agreement by the Department, and the Department may require that ACC's Administrative Offices be co-located within new ACC facilities, or that ACC may be required to move to another building administered by the City at the end of the term of their current lease at their present location.

G. Applicable Law

ACC shall meet all of its obligations and shall provide all services in accordance with all applicable Federal, State, and local laws, and implementing rules and regulations pertaining thereto.

H. Inclusion

ACC agrees that during the term of this agreement that the Commissioner of the Department, and the person representing her as an *ex officio* member of the Board of Directors will be given advance notice of all meetings of the Board of Directors of ACC, and advised in advance if any part of such Board's meeting will involve discussion or voting items that affect ACC's obligations pursuant to this Agreement.

IV. ADVANCES, RECONCILIATION, AND PAYMENT

A. ACC shall be paid with respect to Program Services that it has performed to the satisfaction of the Department in accordance with this Agreement in accordance with the following procedures:

1. On or before the Commencement Date of this Agreement, and thereafter, at least ten (10) business days before the first day of each Fiscal Year occurring during the term of this Agreement, ACC shall submit to the Department such payment request form, or forms, as the Department may specify for an Advance of up to twenty-five percent (25%) of funding allocated in the Operating Budget for operating expenses for such Fiscal Year. The amount total amount of funds advanced by the Department to ACC to enable it to pay future operating expenses funded under this Agreement as they become due and owing is referred to herein as the "Advance". The amount of any payment

in advance of the performance of Program Services by ACC shall be determined solely by the Department on a case by case basis in accordance with Department policies and practices and in accordance with applicable New York City Comptroller Directives and New York City regulatory requirements. The Department makes no guarantee that advances of funds for ACC operating expenses will always be available or will be available at all. The Department reserves the right to reconcile ACC's Monthly trial balance reconciliation statements against ACC actual expenditures and, based upon its findings, to make adjustments in the level of outstanding monies advanced to ACC by the adjustment of payables to match the level of the Advance to the Department's determination of ACC's cash needs. If, after its receipt of the Advance, due to unanticipated or unforeseen expenses or a cash flow problem, and in circumstances that the Department finds extraordinary and compelling, ACC has additional cash needs, a supplemental advance payment may be approved by the Department in like manner, as against any part of the Operating Budget in order to enable ACC to meet its expenses under any Budget line item or items as such expenses become due, in such amount as the Department may deem necessary to meet ACC critical cash needs after the Department's review of the most recent trial balance statement submitted by ACC, together with such other or alternative substantiation as the Department may require. All monies advanced shall be paid by Electronic Funds Transfer into the segregated interest-bearing bank account set up for the purpose of the deposit of Advance Funds by ACC.

2. Within thirty (30) days after the end of each Month of the term of this Agreement, ACC must submit invoices accompanied by a trial balance statement in such form as the Department may require, specifying in detail *all* line item expenditures of Program Funds, both actual and projected, for the Monthly period covered by such invoice and trial balance statement. Trial balance statements submitted by ACC, must be accompanied by such substantiation as the Department may request. All invoices must be in such form as the Department requires.
3. If the Department has not received adequate substantiation of expenditures for which ACC has submitted an invoice, reimbursement of ACC for such expenditure may be withheld by the Department. If ACC is in material default of its obligations under this Agreement in an amount that the Department determines to be of a value greater than \$50,000, the Department may withhold Advances or other payments, or may withhold an amount that the City deems to be equal to the damages that the City may have suffered due to such breach, excepting only payments for Required Debt Service Payments on loans taken in connection with the Queens Full-Service Shelter. Such Required Debt Service Payments shall be paid directly to the Lender(s) even

if other ACC payments are being withheld due to breach, and which, in any event will be paid by the Department. ACC shall sign and submit such documentation and assignment forms as the Department may require to enable such Required Debt Service Payments to be made directly to the Lender(s) by the City, and such requirements with respect to the execution of such documentation and assignment form(s) shall survive any expiration or other termination of this Agreement. As soon as any Lender is known to ACC, the name of the Lender, the payee for all Required Debt Service Payments and a true copy of all loan documents must be furnished to the Department by ACC. ACC must provide the Department with an invoice for payments to such Required Debt Service Payment payees in the amounts due to such payees at least thirty (30) days in advance of the due date of any such payment hereunder. A copy of all loan documentation in the possession of ACC must be provided to the Department, as soon as practicable after ACC's receipt of such documentation.

4. ACC shall be paid for the actual costs to ACC of performing the services rendered by ACC, the actual costs incurred by ACC in connection with its occupancy of its various facilities for the purpose of providing Program Services, including rent, and other miscellaneous operating expenses, all as incurred in connection with the itemized expenses as identified in the portion of the Budget labeled Operating Expenses, which net charges in cumulative total cannot in any event exceed the applicable not-to-exceed amounts for the applicable Fiscal Year as set forth in the Operating portion of Exhibit B, unless any modification thereof is pre-approved in writing by the Department.
5. Each actual cost reconciliation statement, and all invoices submitted hereunder, shall contain the PIN (Procurement Identification Number) and FMS (Financial Management System) number of this Agreement and shall itemize the appropriate charges by Budget line items and if in multiples, their extensions for the items being invoiced, as well as the totals of all Budget line items for the billing period covered by the invoice. The invoices shall be in a form approved by the Department, shall include the contract number and such other identifying information as may be deemed necessary by the Department for financial management purposes, and shall be accompanied by such supporting documentation as is deemed necessary by the Department, and the Department may conduct periodic on-site examinations of ACC financial back up documentation for verification of procurements at any time and from time to time at ACC premises or if such documentation is not on ACC's premises, then ACC shall arrange for the Department's access thereto.
6. The Parties acknowledge that the Budget (Exhibit B) for reimbursable operating costs, including personnel and other than personnel costs ("OTPS"),

is based on the budget submitted by ACC and approved by the Department for the net operating costs of providing the Program Services on the part of ACC to be provided hereunder. Such operating costs are itemized in Exhibit B hereto for the first year of this Agreement, and for the years thereafter are stated as a Maximum Reimbursable Amount ("MRA") for each Fiscal Year. Annually, ACC and the Department shall review such payments paid ACC against such operating costs contained in the Budget to determine ACC's actual costs for providing Program Services under this Agreement. The Department shall not approve for reimbursement any ACC expenditures reimbursable hereunder other than those properly incurred pursuant to, and during, the performance period of this Agreement. All payments to ACC under this Agreement are subject to post-audit by the Department's Deputy Commissioner of Finance and the Comptroller.

7. The Parties acknowledge that if they enter into a Second Renewal Agreement of the First Renewal Agreement, that the Budget for the first Fiscal Year of this Agreement shall be reduced by the total amount of all sums paid to ACC pursuant to such Second Renewal Agreement, thereby reducing the MRA for what would otherwise be the MRA for the first Fiscal Year of this Agreement.
8. Two months prior to the end of each successive Fiscal Year occurring during the term of this Agreement, ACC will present to the Department a proposed Budget for the following Fiscal Year, the total amount of which does not exceed the MRA for operating costs in that Fiscal Year. One factor that ACC may consider in its proposed Budget is the wages of and the amount and period or duration of COLA increases approved for employees of other City-contracted service providers. It shall be within the Department's sole discretion as to whether to amend this Agreement, subject to all necessary approvals and funding availability to increase the amounts budgeted for operating costs. If such an amendment is contemplated, the Department shall initiate the review of the Scope of Services in consultation with ACC to make any necessary adjustments in the amount or scope of the services to be provided hereunder.
9. Monthly reconciliation statements, reconciling the expenditures by ACC between estimated and actual expenses will be submitted by ACC together with the documentation required in connection therewith, and such Monthly reconciliation statements will be broken down for each Monthly accounting period by:
 - Advance received;
 - Actual expenses incurred, as allocated to specific ACC facilities;

- A detailed breakdown of expenses by expense line item categories set forth in the Budget (Exhibit B), which will include percentage allocations of bulk costs apportioned between the shelters and other facilities operated by ACC; and
 - such other and additional expense information as the Department may reasonably request.
10. In the ninth month of a Fiscal Year, or as determined to be an appropriate time for its submission by DOHMH for the partial Fiscal Year, if any, that may occur after the Commencement Date of this Agreement, ACC will provide to the Department a comprehensive consolidated reconciliation statement of funds received during that Fiscal Year (including the Advance), expenses invoiced, the balance of funding held by ACC, and the amount remaining in that Fiscal Year's Operating Budget that has not yet been distributed to ACC. The Department reserves the right to modify the recoupment schedule as needs arise. The total amount of funds distributed to ACC in a Fiscal Year shall not exceed the MRA in the Budget for that Fiscal Year, and therefore, the Department will begin to recoup the monies advanced to ACC hereunder by offset against monies otherwise due to ACC hereunder, on a schedule that will enable such Advance to be recouped by the Department prior to the end of the Fiscal Year, consistent on a schedule that is reasonably consistent with cash flow needs of ACC as balanced against the Department's need to assure that the Fiscal Year Advance is fully recouped by the end of such Fiscal Year. In the event of termination of this Agreement, the monies advanced or otherwise paid to ACC under this Agreement and not yet expended by ACC, or encumbered for expenses due from ACC to vendors for goods and services, shall be immediately refunded to the Department by ACC and such obligation to repay the Department shall survive the expiration or other termination of this Agreement.

11. Revenues and the Application of Revenues.

All revenue derived directly from shelter activities funded or paid for by the Department shall, with the written approval of the Department be used to support program operations and enhancements, as agreed upon by the Parties in writing, excepting only license fees collected for dog licenses, which shall be collected, and remitted to the Department in the manner provided by applicable laws, codes, and implementing rules and regulations. All ACC revenues shall be itemized and reported to the Department Monthly (the "Monthly Revenue Report"). The Monthly Revenue Report shall be made in a form designated and approved by the Department, shall fully disclose all

information required by the Department, shall be subject to Department audit, and Monthly Dog License Revenue Reports shall be submitted to the Department together with the portion of the dog licensing fees that are required to be remitted by applicable laws, rules and regulations to the Department. Gifts, donations and grants received by ACC shall be used to support ACC program operations and enhancements.

12. Interest Bearing Escrow Account.

ACC shall maintain a separate interest bearing escrow account as the Department, or the City Comptroller, may require, for Advances and all other revenues collected by ACC for the performance of Program Services, including, without limitation, Adoption fee receipts in an amount sufficient to honor vouchers issued for the spaying and neutering services and return of deposit. ACC shall submit to the Department documentation demonstrating that such account has been established and shall submit in a form designated and approved by the Department a monthly Report detailing all income and expenses relating to such account. At the end of the Fiscal Year interest earned on the funds deposited in the ACC escrow account shall appear as a credit to the Department against funds otherwise due to ACC on the final invoice submitted.

13. Limitation on Use of Funds

No funds obtained from the Department shall be spent for any expense not incurred in accordance with the terms of this Agreement and allocated for such purpose pursuant to the Budget (Exhibit B), as such allocation may be modified through Budget modifications made in accordance with the terms of this Agreement. If the department, the City or any auditing authority examines the financial records of ACC and finds costs for which reimbursement has been hereunder were improperly incurred, ACC shall then reimburse such disallowed costs to the Department upon demand. Failure to make such reimbursements shall be grounds for termination or may be withheld or offset against payments otherwise due to ACC under this Agreement or any other agreement with the City.

14. Invoices

All requests for payment hereunder and Reconciliation Statements of the actuals against the projected estimated amounts shall be in writing and submitted electronically to: invoiceIntake@health.nyc.gov or, if the Department changes its manner of processing such invoices and related submissions shall be submitted then to such other email address, or if

the Department supersedes its email submissions by requiring submissions then such submissions shall be made by ACC through an electronic submission system in such manner the Department may direct, such change over in submission requirements to take place, as, when and if the Department requires such alternate means of submission.

15. Content of Invoices

As soon as practicable after this Agreement is effective, ACC shall submit a draft invoice and reconciliation statement to the Department's Office of Fiscal Management, and the Parties shall work cooperatively to agree upon the format and content of a model invoice which meets the form and content requirements of this Agreement. Each invoice for actual costs for operating costs in the form of a reconciliation statement shall be submitted on a Monthly basis, together with the Monthly reconciliation statements, which are a trial balance reconciliation of budgeted amounts on a Budget line item basis for the Budget line items listed in Exhibit B hereto and in each Fiscal Year Budget thereafter, (the "Reconciliation Statement") and shall contain the Procurement Identification Number ("PIN") number of this Agreement, the Financial Management System ("FMS") number, and the Department Responsibility Center number, and shall itemize the appropriate charges and, if in multiples, their extensions for the items being invoiced, on a site by site basis, if required by the Department, as well as the totals of all Budget line items for the billing period covered by the invoice. Such identification numbers will be provided by the Department upon request, and may be changed by notice to ACC during the term of this Agreement. ACC shall also print the PIN, appearing in the footer below in this Agreement on every invoice. All invoices must accurately reflect expenses, in accordance with the approved Budget, which were actually paid for by ACC during the month covered by the invoice. The reconciliation statements shall be in a form approved by the Department and shall be accompanied by such supporting documentation as is deemed necessary by the Department.

16. Cost of Living Increases.

Where ACC's industry has experienced an increase in costs (e.g., salary, wage or fringe benefit cost of living ("COLA") increases, a change in the prevailing or living wage, a renegotiated collective bargaining agreement, an industry-wide increase in the Producer Price Index ("PPI") for fuel or energy) that exceeds the Budget, and the Office of Management and Budget ("OMB") or another independent agency has determined in writing that additional funds will be made available to a City agency for the class of contracts pursuant to which ACC provides the same or substantially similar services, then the

Department shall reimburse ACC for such increases in costs to the extent that such increases have been authorized by OMB, or authorized by any successor City agency, office, or subdivision if such OMB budgetary oversight is reassigned by the City in the future. Any cost of living increase will not be effective unless and until an amendment to the Agreement is registered pursuant to Charter § 328.

B. Electronic Funds Transfer

1. The account information supplied by ACC to facilitate the electronic funds transfer in accordance with Article 11.02 of Appendix A shall remain confidential to the **fullest extent provided by law**.

V. MAXIMUM PAYABLE AMOUNT AND ADDITIONAL PAYMENT PROCEDURES AND RELATED REQUIREMENTS

A. Maximum Reimbursable Amount and Other Cost Provisions

1. *The total MRA for all payments under all three Parts of the Budget shall not exceed one billion, four hundred and eighty-seven million, nine hundred and sixty-six thousand and four hundred and seventy one thousand dollars (\$1,487,966,471.00) for the entire term of this Agreement, subject to the reduction to be made in the first partial Fiscal Year occurring during the term of this Agreement, if any, pursuant to Article IV, Section A, subsection (9) of this Agreement for funding provided pursuant to the Second Renewal Agreement, and shall not exceed the total MRA for each Fiscal Year of the term of this Agreement as set forth in the Budget for such Fiscal Year. The not-to-exceed MRA allocated for total expenditures for costs hereunder as set forth in Exhibit B shall not be exceeded without a written amendment to this Agreement, signed on behalf of the Parties, and no funds can be reallocated by Budget modifications between the Operating Budget, and other parts of the Budget. In addition, the amounts allocated for acquisition, development, construction and payment of Required Debt Service Payments shall not be reallocated for any other purpose or expenditure. Subject to Article V, subsection A.14 below, if, at the net level, the ACC is overspending one of the Operating Budget line items, and underspending in another Operating Budget line item, ACC may submit a written or electronic request to the Department to offset the actual net operating cost of the Budget line items by a Budget modification transferring allocations between Budget line items. As used herein, "Budget line item" means the categories equivalent to those listed in the Operating Budget in Exhibit B, e.g., OTPS Placement, OTPS Admissions, OTPS Shelter Operations, OTPS Medical, OTPS Field, OTPS Administration, PS Placement, PS Admissions, PS Shelter Operations, PS*

Medical, PS Field, PS Administration. However, ACC must justify, to the Department's satisfaction that the overspending of a Budget line item occurred due to circumstances beyond ACC's control. The Department, subject to the availability of funds, may approve said request, but may deny such overspending if any Budget modification would result in overspending the Budget line item amount for the applicable City Fiscal Year. Absent a budget modification, to the extent such budget modifications are permitted hereunder, ACC shall not be reimbursed for amounts in excess of the Budget line item applicable to any expense during the applicable Fiscal Year.

2. Cumulative annual payments in any City Fiscal Year, commencing July 1 and ending on June 30th ("FY") by the Department under this Agreement shall not exceed the Maximum Reimbursable Amount ("MRA") for such FY as set forth in the Budget (Exhibit B) for each FY of the term of this Agreement.
3. Fiscal Year End Close-outs. ACC shall submit to the Department, no later than thirty (30) days after the end of the City's Fiscal Year, the final monthly expenditure report and reconciliation reports for such Fiscal Year, covering the period through June 30 of the Agreement Year, in the manner and form prescribed by the Department. If, upon the reconciliation of the invoices submitted for each such Fiscal Year, the City owes ACC additional funding for Program Services expenses required to be paid pursuant to this Agreement, the Department shall authorize payment to ACC in the appropriate amount within thirty (30) days of the date on which it completes its review of the last invoice submitted for the Fiscal Year.
4. Refund by ACC. If, upon the reconciliation of contract payments and invoices for the last month of the FY, the aggregate amount received by ACC during the entire FY exceeds the amount due under this Agreement to offset the entire sum of funds advanced to ACC in the applicable fiscal year, as determined by the review by the Department of FY reconciliation invoices submitted pursuant to this Agreement and the substantiation documentation submitted in connection therewith, the Department shall notify ACC of the exact amount due to the City for over-reimbursements during the Agreement Year. Immediately, but no later than thirty (30) days after the reconciliation date, except for good cause shown to the Department, ACC shall refund to the City the amount due for such over-reimbursement under this or any other agreement by a check naming the "NYC Department of Health and Mental Hygiene" as the payee.

5. If ACC fails to refund amounts due the City for any Fiscal Year under this or any other agreement, the Department may, in its discretion (a) withhold payments otherwise due and/or payable to ACC under this Agreement until ACC has made all payments due the City under this or any other agreement; or (b) deduct from payments due ACC under this Agreement, either in installments or in one lump sum, the amount due the City under this or any other agreement, subject only to payment of Required Debt Service Payments, when due and owing.
6. ACC's obligation to reimburse any amounts due to the Department under this Agreement shall continue beyond the expiration or other termination of this Agreement, and if not paid within ninety (90) days of the due date, shall bear interest at the rate established by the City's Comptroller for such overdue payments from vendors.
7. Final Payments by the City. If, upon the reconciliation of all invoices submitted together with back up documentation for any City Fiscal Year, the Department determines that there is a balance owing to ACC for payments to be made hereunder, the Department shall authorize payment to ACC in the appropriate amount within thirty (30) days of the date of the finalization by the Department.
8. Dog License Fees. ACC shall sell Dog Licenses on behalf of the Department to individuals adopting dogs from ACC and shall remit the fees collected, less the Dog License Handling Fee that ACC is permitted to retain, which is currently as of the date of this Agreement, one dollar (\$1.00) per Dog License issued to the Department Monthly by a check made payable to "NYC Department of Health and Mental Hygiene". The Escrow Account maintained by ACC for the Advance shall also serve as the repository of the fees collected on behalf of the Department in the performance of Program Services.
9. Records.

ACC shall retain proper and sufficient bills, vouchers, duplicate receipts and documentation for all payments, expenditures or refunds made to, or received by, ACC in connection with any expense for which ACC will claim reimbursement pursuant to this Agreement. ACC may maintain a petty cash fund, however, no expenditures may be made from such petty cash fund for procurements valued in excess of \$200 per total purchase. (See also subsection (21) below in this Section A.
10. Extent of Competition Required.

Animal Care and Control of New York City, Inc.
PIN: 19AA003401R0X00

ACC shall retain records which detail the method of procurement, the basis for selection or rejection of a subcontractor or supplier and the basis for the price of the goods and/or services obtained from such subcontractor or supplier. Except as more specifically detailed herein below with respect to vehicle and Equipment acquisition, ACC must solicit and document at least three (3) written estimates for any payment made or obligation undertaken in connection with any contractual obligation or for its purchase of goods or services (including, but not limited to, consulting services) for amounts in excess of \$25,000. Such monetary threshold applies to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made of obligations undertaken will not be artificially divided in order to avoid the requirements of this subsection 10. For any payment made or obligation undertaken in connection with a contractual agreement in total amount between \$5,000 and \$25,000, ACC shall conduct sufficient market research and/or competition to support its determination that the price of such purchased goods or services is reasonable. Such thresholds apply to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or obligations undertaken shall not be artificially divided in order to avoid the requirements of this paragraph. The City may retain the services of a Group Purchasing Organization ("GPO") to facilitate the purchase of goods. If the City retains such a GPO, the Department may direct ACC to use the GPO. The foregoing requirements contained in this subsection (10) shall not apply and the procurement requirements set forth herein will be deemed satisfied through the use of such GPOs.

11. All payments to ACC to reimburse the costs of goods and services shall be limited to the fair and reasonable cost to ACC, as certified by ACC, and must be documented by ACC by attachment of its cost data, and such other documentation as the Department may require to substantiate ACC's expenses, thereby substantiating actual expenditures during the period covered by the cost reimbursement reconciliation invoices submitted on a four quarter City Fiscal Year basis. Each such invoice for monies to be requested, if actual expenditures exceed the Advance and applicable revenues, shall cover expenses incurred by ACC during the successive three month periods of each City Fiscal year ("FYQ"), occurring during the term of this Agreement, or part thereof (if this Agreement does not commence on the first day of a FYQ with respect to the first and last billing periods of this Agreement, if the periods covered by the invoices would not otherwise be concurrent with a full FYQ). Such invoices shall be submitted only for any amounts that may be due after reconciliation of expenses, advances and revenues during the period covered by the invoice. FYQ Invoices shall

include, without limitation, documentation of the cost to ACC for goods and services in the form of vendor invoices, paid receipts and the like. The reimbursement for goods and services may include the items identified as line items in the Budget attached hereto as Exhibit B and such reasonable costs of other or additional equipment, materials and supplies for which reimbursement is to be sought hereunder by reconciliation against advances made hereunder. The Department reserves the right to limit its reimbursement of the cost of goods and services to the fair and reasonable cost prevailing in the industry for such goods and services in the quantities purchased. The fair and reasonable cost will be determined by the Department in its sole discretion with reference to (1) the type of cost generally recognized as ordinary and necessary for the contract performance, (2) generally accepted sound business practices, (3) arm's length bargaining, (4) no deviations from ACC's established practices, (5) compliance with applicable Federal, State and local laws, rules and regulations, and the (6) the fair market price of the item for which the cost is incurred. Adhering to procurement requirements contained in this Agreement will be evidence of fair and reasonable cost.

12. All indirect cost rates set forth in the Budget (Exhibit B), such as employee benefits as a percentage of salary, shall be fair and reasonable.
13. For contracts wholly or partially funded with City tax levy funds, funds remaining unspent or unobligated at the end of the Fiscal Year cannot be used for goods or services performed in subsequent fiscal years. Therefore, all services must be performed and all invoices must be received by the end of each applicable Fiscal Year for funds advanced prior to such City Fiscal Year end occurring within the term of the Agreement in order to obligate the funds for reimbursement.
14. Reallocations of Operating Budget line-items between other than personal service line items ("OTPS") and personal services ("PS") and reallocations of more than \$100,000 in any single Fiscal Year must be approved in advance by the Department in accordance with the time schedule established by the Department, and must be completed prior to the date designated by the Comptroller of the City of New York for the affected City Fiscal Year and such reallocations may only be made by the Department, subject to acceptance in the City's fiscal management system ("FMS"). In addition, no amounts allocated in the Budget for capital funding expenses (Equipment, Vehicles and all funding for the new Queens Full Service Shelter) can be reallocated by ACC, but must be spent solely for the capital expenses for which such amounts are allocated in the Budget.

15. If ACC has not submitted all documentation required for specific items for which ACC has submitted an invoice for reimbursement, the Department may withhold payment for unsubstantiated amount(s).
16. All purchases of equipment (excepting only initial outfitting for the new Queens Full Service Shelter only if such initial outfitting is financed as part of the permanent financing) and vehicles and the use and inventory thereof must comply with the terms and conditions contained in Subsection C of Article V (Maximum Payable Amount and Additional Payment Procedures and Related Requirements) to the body of this Agreement.
17. If Legal Requirements in respect to some areas of the services to be provided by ACC hereunder are changed from current New York State requirements and City requirements so that the cost of providing them as set forth in the Operating Budget, increases by more than a *de Minimis* amount, the Department may reallocate funding allocated for specific operating expenses as set forth in the Budget to other specific services or costs, with a resulting decrease in certain services, so long as overall services that will be provided will meet the Department's service requirements. Notwithstanding the ability to so reallocate funding, no reduction or reallocation of Required Debt Service Payments will be required.
18. ACC shall supply the Department with its Federal, State and City Employer Identification Number. Failure of ACC to supply such information shall result in the delay in payment of any vouchers until such information is made available.
19. The City shall not be deemed, on the basis of having made payments to ACC, to have released ACC from any claim or liability, or to have waived any action arising from any breach of this Agreement.
20. Promptly upon receipt by ACC, payments of money shall be placed in an insured or collateralized account, interest-bearing if permitted by applicable laws, rules and regulations, in a New York City financial institution designated by the New York City Banking Commission or such other financial institutions approved by the Deputy Mayor.
21. In order to qualify for reimbursement for each expenditure under this Agreement funds expended under this Agreement (excepting only petty cash expenditures to the extent permitted hereunder) for which reimbursement will be sought shall be expended by check or electronic funds transfer from the bank, savings and loan association or other financial institution holding them. Each check or the related check stub must have a voucher number, or other

indication of the purpose of the payment, written on it. Documentation must indicate the purpose of each electronic funds transfer. No such check or electronic funds transfer drawn on Program Funds shall be payable to the order of cash or bearer or the like. Checks or electronic funds transfers may be used to pay for credit card bills, provided that there is documentation as to what the credit card covers.

22. Disallowances

The Department shall review ACC's Invoices, Reconciliation Statements, Financial Reports, Final Project Invoices and supporting documentation as required, and may disallow for payment any charges which were not rendered, documented and/or authorized in accord with the terms of this Agreement, or for failure to deliver any required service or work product. The City may offset against any other payments otherwise due to ACC any amounts due and owing to the City in accordance with the payment provisions of this Agreement.

23. Budget Modifications

Subject to provision V.A.12 above in this Article V and other limitations on budget modifications or reallocations contained herein, and to further the purpose of this Agreement, the City and ACC may modify the line item amounts designated in the Budget for operating expenses to be provided hereunder, provided that a written modification request is received by the Department no later than three (3) months prior to the expiration of any City Fiscal Year occurring during the Agreement, unless otherwise permitted by the Department, and further provided that written approval of the Department for such modification is received prior to any line item being over expended by ACC. In no case shall a budget modification increase the Maximum Reimbursable Amount of this agreement, as it may be amended from time to time during the term of this Agreement.

24. All payments to ACC under This Agreement shall be subject to all applicable City, State and federal laws, regulations, requirements and practices.

B. Payments for Queens Full-Service Shelter

1. At the closing or as soon as practicable thereafter, for one or more Loans collateralized by the Queens Site, ACC Lender(s), will be paid directly by the City on behalf of ACC, as ACC's Fiscal Agent, subject to the allocations therefor contained in the Budget (Exhibit B), and subject to written assignment of such payment in an assignment form as required by the City

and signed on behalf of ACC. The down payment on the Queens Site, and all Required Debt Service Payments, shall be paid directly by the Department as required for Queens Site Required Debt Service Payments, on or before the due dates, subject to the submission by ACC of an invoice therefor. ACC shall cause the Lender(s) to provide its or their name and monthly amount of Required Debt Service Payment(s) to the Department to facilitate the registry of such payment obligations in FMS by the Department. Contemporaneously at the time of the closings for any and all loans required for the development of the Queens Site, ACC shall sign and submit all documents required by the Department to assign such Required Debt Service Payments to be paid directly to the Lender(s). The initial outfitting expenses, if financed as part of the construction financing and permanent financing for the Queens Full Service Shelter will be paid in the same manner as the payments are to be made in accordance with the other provisions of this Agreement applying to the Budget payments for Equipment, subject to the funds allocated therefor in the Budget for Equipment (Exhibit B), unless and to the extent that such initial outfitting expenses are included in the loans for the improvements to the Queens Site. However, if the initial outfitting costs as allocated in the Budget, if any, for that purpose are not included in the financed improvement costs, then ACC shall purchase such items directly, subject to the provisions respecting the purchase of equipment hereunder in Section C of Article V of this Agreement. With respect to expenses for equipment, fixtures and other capital expense items payable under this Agreement that are not part of the initial outfitting expenses that are financed by Lender(s) hereunder, subject to the purchase of such equipment, fixtures and other items by ACC, and subject to allocations therefor purchases of Equipment and Vehicles as set forth in the Budget. ACC shall submit to the Department such documentation as is requested by the Department to substantiate all equipment expenditures. A budget modification between Equipment expenses and Initial Outfitting Expenses will be made, as appropriate when it is known whether Equipment and other initial outfitting expenses will be financed in connection with the new Queens Full Service Shelter.

2. The Department agrees to pay an amount equal to the Required Debt Service Payments as required pursuant to the applicable ACC Note and Mortgage provisions pertaining to the Queens Site and/or other applicable financing documents, which shall be separately invoiced and paid on or before due date. Each such payment may be made, at the option of the Department and on behalf of ACC, directly to the designated Lender or Lenders, as applicable, on a monthly basis, after the receipt by the Department of an invoice or invoices requesting payment. The Department hereby agrees that pursuant to the foregoing designation as payor for ACC, each applicable payment shall be sent to the Lender or Lenders, as applicable, by wire (provided they,

respectively, comply with current and future City requirements for payment by electronic fund transfer) or check, as directed by the Lender as to its Required Debt Service Payments. Subject to ACC's submission of an invoice for payment, required Debt Service Payments shall commence in accordance with the applicable loan documents requirements.

3. Notwithstanding the provisions above in subsection A of this Article V with respect to budgetary modifications, there shall be no reduction in the amount of the Required Debt Service Payments.
4. Fiscal Agent Appointment. Solely for purposes of payments made hereunder and the fiscal management of funds hereunder, ACC hereby appoints, and the Department accepts the appointment as ACC's fiscal agent for the sole purpose of making payments to third parties in connection with the acquisition, development and construction and payment obligations to third parties in connection therewith of monies that are allocated therefor to ACC in the Budget to this Agreement, including, without limitation, any down payment allocated in the Budget for the Queens Site and Required Debt Service Payments due in with the acquisition, development and construction of the Queens Full Service Shelter and to be made to any Lender or third party in connection with the site acquisition, pre-development, and development of such Queens Full Service Shelter. ACC hereby indemnifies the City and holds it harmless from and against any and all claims for payments which have been paid to third parties for the Queens Full Service Shelter, and agrees that it will submit invoices for such payments to such third parties, not less than thirty (30) days prior to the due date of such payments, together with such background documentation as the Department may require. If the payment is to be paid to Seller's attorney, then, subject to submission of an invoice for such amount by ACC not less than thirty days before such amount is due and payable, such amount may be paid by the City for deposit in Seller's attorney's escrow account under an escrow agreement approved by the City, which provides that the down payment shall be held in an interest bearing account with the interest thereon credited to ACC at closing, or pursuant to the terms of a purchase agreement pre-approved by the City.
5. If any payments due to a third party under this subsection B of this Article V are inadvertently made payable to ACC, such payments will be returned to the Department for re-issue in the name of the appropriate third party. If any funds paid pursuant to allocations made in the Budget for the Queens Full Service Shelter acquisition, development and the financing thereof are to be refunded, ACC shall repay the City the amount thereof. If any down payment paid under the First Renewal Agreement, as amended, is refunded

by the Seller, or is not applied to the purchase of the Queens Site as down payment at closing on the Queens Site because ACC decides, without the approval of the City, not to purchase the Site and the down payment is forfeited, then ACC shall repay such amount to the City, upon demand, or if such amount is refunded to ACC, then ACC shall immediately, upon receipt of such refund pay the equivalent amount of the refund to the Department by check made payable to the New York City Department of Health and Mental Hygiene or shall direct the seller to pay such sum directly to the Department.

C. Vehicles and Equipment Purchases

1. All items of Equipment (including all fixtures, office furniture, medical equipment), the cost of which is to be submitted for reimbursement pursuant to this Agreement, but exclusive of any equipment the purchase of which is financed by a lender as initial outfitting expenses in connection with the new Queens Full Service Shelter, and vehicles purchased or leased with funding provided pursuant to this Agreement must comply with the following:
 - a. Approval. All Vehicles and items of Equipment must be approved for purchase or lease by the Department, as part of the review of invoices submitted hereunder;
 - b. Use. All vehicles and items of Equipment must be used exclusively in the provision of Program Services required under this Agreement and in accordance with the terms and conditions of the standard City Funding and Security Agreements in use by the City on the date that such item is first placed into use;
 - c. Procurement. Prior to purchasing or leasing Equipment or vehicles, ACC shall obtain quotes or bids, as follows:
 - (1) For purchases with a value of \$5,000 or less, no competitive bids are required. Documentation of the purchase must be maintained by ACC, including, without limitation, the name of the vendor, the item purchased, the date and amount paid, and comparative pricing data to document the reasonableness of the pricing;
 - (2) For purchases with a value over \$5,000 up to and including a value of \$25,000, ACC shall conduct sufficient market research and/or competition to support its determination that the price of such purchase is reasonable. Documentation of the market research and the purchase must be maintained by ACC, and such documentation must include the name of the entities contacted, the vendor, the item purchased, and the date and amount paid for the item; and

- (3) For purchases of \$25,000 or more, ACC must obtain a minimum of three written bids and such bids must contain a description of the item requested, the time, date, place and form of requested responses, and the name of ACC's employee responsible for securing such bids, and such documentation must be maintained by ACC.
- (4) Notwithstanding the foregoing, ACC may obtain less than the prescribed number of bids or quotes, if ACC provides the Department with a statement reasonably satisfactory to the Department explaining that it is ACC's determination that there are less than the required number of vendors who can provide such Equipment or vehicles to ACC's satisfaction, stating the reasons therefor.
- d. Funding Limitations. The total amount allotted by the Department for the Equipment and vehicles shall not exceed the amounts allocated therefor in the Budget (Exhibit B); as such Budget may be amended or modified from time to time, as provided hereunder.
- e. Selection of Vendors. ACC shall purchase or lease the vehicles and Equipment from vendor(s) who, in the reasonable discretion of ACC, provides the most advantageous combination of price, quality and fitness for the intended purpose, provided that if ACC selects a vendor who is not the lowest bidder, ACC shall provide a statement reasonably satisfactory to the Department justifying ACC's selection.
- f. City Purpose Covenant. ACC shall make consistent use of all vehicles during its hours of operation to provide the Program Services required under this Agreement for the term of this Agreement, subject to available funding.
- g. Ownership, Control and Liens. Unless ACC first obtains the Department's written consent, ACC shall not: (a) transfer ownership or control (by sale, lease, loan or otherwise) in and to any Equipment to any Person, (b) dispose of or exchange any Equipment, or (c) create, permit or suffer to exist any Lien against any Equipment, except Liens in favor of the City. Upon expiration or termination of this Agreement, if requested by the City, ACC shall transfer ownership and control in and to any Equipment and vehicles as the City may request and shall execute all documents reasonably necessary to effectuate and evidence such transfer.
- h. Operation; Use by Unrelated Persons. All Vehicles shall be used and operated by ACC only in the ordinary conduct of its business in accordance with all applicable operating instructions and applicable Laws or other legal requirements. ACC shall not allow use or operation of any vehicles by any

unrelated Person, i.e., any Person who is not affiliated with ACC as an employee or volunteer, and/or any Person who does not operate or make use of vehicles in accordance with this Agreement.

- i. Location. Each vehicle when not in regular use shall be parked at one of ACC's facilities within New York City, and may not be parked elsewhere without the Department's prior written consent, except that any vehicles may be temporarily parked at other locations for maintenance or repair. ACC understands and agrees that vehicles may not be parked at any time at a private residence, except, unless the location is for a *bona fide* ACC service-related purpose pursuant to this Agreement, e.g., to facilitate the surveillance or pick-up of an animal in the performance of Program Services to be provided hereunder.
- j. Registration of Vehicle(s) with DMV. ACC shall cause all vehicles to be registered with the New York State Department of Motor Vehicles ("DMV") as often as, to the extent, and in the manner, required by DMV, and shall provide the Department, upon request, with evidence of such registration.
- k. Maintenance; DMV Inspections. ACC shall keep all Equipment and vehicles funded by the City in good condition and working order, ordinary wear and tear from proper use excepted, and shall make all necessary adjustments, repairs and replacements, thereto. Without limiting the generality of the foregoing, ACC shall make all necessary adjustments, repairs and replacements that may be required by vehicles in order to pass all inspections required by DMV.
- l. Alterations. ACC shall not make any alterations, additions or improvements to Equipment or to Vehicles, except as may be required for ACC to perform its Program Services and such alterations, additions or improvements do not impair the commercial value or the utility of such Equipment or vehicles.
- m. No Violations of Insurance and Warranty Requirements. ACC shall not violate any insurance or warranty requirements with respect to vehicles and Equipment. In addition to the insurance requirements set forth in this Agreement, ACC shall maintain insurance against loss or damage to the vehicles and Equipment for which the cost is equal to or more than \$5,000 in value and such coverage should be in an amount not less than the full replacement thereof. In the event of a loss or damage with respect to Equipment of vehicles, ACC shall promptly submit a claim under the applicable policy and execute and deliver to its insurers such proofs of loss, estimates for replacement, and other instruments as may be necessary,

including assignment of the proceeds from the adjustment amount to recover any insurance proceeds or repair the Equipment or Vehicles, as applicable, and shall simultaneously deliver copies of same to the Department. Such insurance proceeds shall be made payable to the Department (as loss payee as its interests may appear, named on the policy), in the event of a total loss, or partial loss, the insurance proceeds shall be paid directly to the City and either applied to the prompt repair of the Equipment and vehicles, as directed by the Department, or to a replacement vehicle for use during the balance of the useful life of the vehicle that it replaced. However, if any item of Equipment or vehicle cannot be repaired or replaced to the extent that it can be used in accordance with the requirements of this Agreement, unless the Department agrees otherwise, the insurance proceeds shall be allocated between the Department and ACC as follows: (i) to the Department, an amount equal to the amount of the funding actually disbursed to ACC for the purchase of the item(s) of Equipment or vehicle; and (ii) the balance, if any, to ACC.

- n. Labels and Tags. Promptly, upon acquisition, ACC shall prominently affix a durable label or tag (as, for instance, an aluminum property tag) to each vehicle, stating as follows:

*Financed by the City of New York and
Subject to a First Priority Lien in its Favor.*

Promptly upon delivery of any item of Equipment, ACC shall affix a property tag in form satisfactory to the Department identifying the item as property of the City of New York.

- o. Definitions: For purposes of this Section 15 and Section 16 below:
- (i) "Lien" means any lien (statutory or otherwise), including, but not limited to, mechanic's, laborer's, materialman's, garageman's and public improvements 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.
 - (ii) "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.

16. The following provisions shall be conditions precedent to the funding of Equipment and Vehicle Purchases or Leases hereunder:
- (a) Funding for such Equipment must be included in the Exhibit B (Budget), as the same may be modified from time to time hereunder; and
 - (b) Permission in the form of express written consent by the Department to purchase any item of Equipment that is over \$5,000 in purchase or lease value;
 - (c) verification that the number of quotes or bids appropriate to the procurement have been obtained for the equipment sought, and documentation of said bids must be provided to the Department in a manner and form acceptable to the Department;
 - (e) payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity are not in excess of the monetary thresholds applicable to the procurement. Payments made or obligations undertaken were not artificially divided in order to avoid the requirements of this paragraph.
 - (f) The execution and delivery to the Department by ACC of the following:
 - (i) Funding and Security Agreements. ACC shall duly execute and deliver to the Department a Funding and Security Agreement in standard form then in use by the City, granting the City a first lien and prior security interest in and to all Equipment and/or vehicles other collateral as described in the Funding and Security Agreement. If the actual Equipment purchased differs from the Equipment listed as Schedule I in the Funding and Security Agreement, then Schedule I shall be replaced to reflect the actual Equipment purchased.
 - (ii) Confirmation of Purchase. Within sixty (60) days after the Department providing ACC with funding for the Equipment and/or vehicles, ACC shall provide to the Department a copy of the invoice for each of the Equipment and/or vehicles purchased with confirmation of payment of such invoice. Copies of the paid invoices shall also be sent to the City's Office of Management and Budget, 255 Greenwich Street, New York, New York 10007, Attn: Jeffrey Werner, Deputy Counsel, or to such other name and City office as may be the subject of a written notice given to ACC.
 - (iii) Notice of Lien; Certificate of Title. The City shall have a Lien on each of the Equipment items and/or vehicles. Within sixty (60) days

after the Department providing ACC with funding for each items of Equipment or vehicle, ACC shall provide to the Department a properly completed and executed Notice of Lien in the form provided by the Department for such purpose upon request by ACC, and accompanied by the corresponding Certificate of Title in the case of a vehicle. The Lien holder shall be listed as "The City of New York, through its Department of Health and Mental Hygiene". The Department will file the Notice of Lien with DMV and request that DMV note the City's Lien on the Certificate of Title. At the Department's request, ACC must execute a UCC-1 to evidence the Department's interest in equipment purchased at a price in excess of \$25,000 and to enable the Department to perfect that interest by filing or otherwise.

- (iv) Judgment and Tax Lien Search. Within thirty (30) days after purchasing the Equipment, ACC shall provide to the Department a judgment and tax Lien search conducted by a reputable title company or other established lien search company search evidencing that there are no Liens on the Equipment or other Collateral covered by the Funding and Security Agreements, except Liens in favor of the City. ACC shall clear any Liens that are not City Liens.
- (v) Supporting Documentation. ACC shall submit to the Department such additional documents and information reasonably requested by the Department with respect to Equipment, including, without limitation: (a) copies of cancelled checks, proof of electronic payment (e.g. ACC credit card account statements and account payment documentation) and (b) documents that would customarily be required by lenders and other participants in transactions for the finance and/or purchase of Equipment.

- B. All items of Equipment funded by the City hereunder of a value or purchase price in excess of \$5,000.00, or leased, or otherwise provided by the City or the Department, for use by ACC shall be, and remain, personal property owned by the City of New York, and shall be conspicuously tagged in such in a manner that complies with applicable City Comptroller directives and shall be inventoried on a continuous basis as acquired and put into use (with such date of purchase or first use contained in such inventory), and at least annually, a copy of such current inventory shall be submitted with ACC's reports to the Department. Except to the extent that ACC and the Department otherwise agree in a writing signed by both Parties to this Agreement, upon termination, such City-owned equipment shall be returned to the City. If City-owned equipment is no longer required, ACC agrees to

Animal Care and Control of New York City, Inc.
PIN: 19AA003401R0X00

notify the Department and seek guidance about, and comply with, the City's Asset Relinquishment Policy. No liens will be removed of record unless and until the inventory submissions required hereunder are up to date.

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VI. BANK ACCOUNT REQUIREMENTS FOR ADVANCED MONIES

A. Advances

1. The City may remit to ACC a series of advances in accordance with the payment provisions contained above in Article IV to initiate performance of this Agreement subject to the completion of all conditions indicated in this Article VI, and upon prior submission to the Department of the following items in the form required by the Office of the Comptroller of the City of New York:
 - a. receipted copy of bank authorization required;
 - b. written notice of proper signatories required; and
 - c. proof that ACC has complied with the foregoing requirements of this Agreement, and has furnished proof thereof to the Office of the Comptroller of the City of New York.
2. The amount of each Advance shall be determined solely by the Department and reviewed by the City.
3. ACC shall deposit the Advance in a bank located within the City of New York in a separate, interest-bearing bank account maintained for the purpose of expenditures required and necessary for the performance of the Program to be carried out by ACC under this Agreement, and such bank account shall be maintained solely for payment of the expenses that ACC incurs in ACC's performance of the Program under this Agreement, including, without limitation, the down payment, purchase money and debt service and other expenses in its initial outfitting of the Queens Shelter, if any such monies are paid directly to ACC for it to pay a third party, and the Advances shall be used exclusively for the payment of obligations properly incurred pursuant to the Budget attached to this Agreement as Exhibit B. The Advances shall be deposited only in such accounts as approved by the Department. All interest due to the City shall be reported on a Fiscal Year basis in the final Monthly invoice and applied as a credit to the Department in the final invoice for the applicable Fiscal Year. The Advance shall not be commingled with funds from

any other source, excepting only fees collected on behalf of the Department, or with funds received under any other agreement.

4. Any uncommitted funds from the Advance in the hands of ACC shall remain and be the property of the Department and these funds shall be returned to the Department upon the expiration or termination of this Agreement.

B. Bank Authorization

1. ACC shall deliver to the bank an authorization signed by ACC stating that:
 - a. the bank account is maintained pursuant to an agreement with the Department; and
 - b. ACC authorizes, empowers and directs the bank to forthwith comply with any written request made by the Department to furnish any bank statements, cancelled checks or other information in the possession or control of the bank relating to the bank account; and
 - c. ACC authorizes, empowers and directs the bank to forthwith comply with any written requests made by the Department to transfer the balance of funds remaining in the account to the Department.
2. ACC shall deliver to the Department a copy of the authorization with the signature of any authorized bank representative indicating that the authorization has been received and accepted by the bank and that the bank will comply with the Department's demand, if and when made.
3. **Notification of Proper Signatories and Bank Location**
 - a. ACC shall notify the Department of the person or persons and their home address authorized by ACC to receive, handle or disburse monies under this Agreement. Notification thereof must be in writing and furnished to the Department within five (5) days from the execution of this Agreement, and within five (5) days from any subsequent change or substitution of authorized signatories.
 - b. ACC shall notify the Department of the names and locations of ACC's depository within five (5) days of opening the required bank account, or the change or substitution of the depository.

C. Fidelity Bond/Crime Insurance

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ACC shall obtain at the commencement of, and maintain at all times during the term of, the Agreement and any renewal period, a fidelity bond, or Crime Insurance (coverage as described in section 7.03 of Appendix A in the minimum limits set forth in Schedule A to Appendix A), covering, at a minimum, the activities of all persons authorized by ACC to receive, handle or disburse the monies granted under this Agreement. The bond shall be issued by an insurer duly licensed by the Superintendent of Financial Services of the State of New York to transact fidelity bond business in the State of New York and shall provide that any payment made thereunder for any loss sustained either by ACC or the City or both of them through any fraudulent or dishonest act by one or more of the bonded persons shall be payable to the Department of Health and Mental Hygiene or the City of New York. The bond, or crime insurance coverage amount, shall be, at a minimum, equal to the sum of the amount of the Advance hereunder. Any failure to keep this bond in full force and effect during the term of this Agreement or any renewal hereof shall be cause for termination of this Agreement.

VII. REPORTS

A. Monthly Service Reports

ACC shall submit monthly reports to the Department, which shall, among other requirements set forth herein, provide sufficient detail and information to enable, at a minimum, the Department to comply with the report requirements set forth in Chapter 8 of the Administrative Code of the City of New York Section 17-805, and shall list the quantities and types of services performed, broken down by each Full-Service Shelter and Admissions Facility, both in statistical and narrative form, and in a form that is approved by the Department, that shall contain sufficient information and data to allow, in the sole opinion of the Department, the Department to evaluate ACC's monthly operations and activities agreed to hereunder. These reports will include, but not be limited to, number, species, type, and origin of animals, numbers of animals adopted, transferred to Animal Rescue Groups, euthanized, spayed or neutered, number and type of activities, length of stay, holding cases, dog licensing activities and other specific information related to the types and quantity of services provided during the report period as more specifically set forth in Exhibit A (Scope of Services). The Monthly Reports shall also categorize specific services by species, type of animal (e.g., dogs, cats, rabbits), and include, but not be limited to, number, type, and origin of animals, numbers of animals adopted, euthanized, spayed or neutered, number and type of activities, length of stay, holding cases, dog licensing activities and other specific information related to the types and quantity of services provided during the report period as more specifically set forth in Exhibit A.

The monthly reports provided under Section (a) of this Article VII shall distinguish among dogs, cats, and other animals and shall categorize such other animals by country, or state, or other place of origin and source within the City, method by which such animal came into possession of ACC, and such other characteristic as may be specified by the Department. The reports for a given month shall be submitted to the Department no later than 15th of the month after the end of the month to which such reports pertain. Failure of ACC to submit required reports may be deemed a breach of contract and shall have a minimum of forty-five (45) days to remedy. In case the breach is not remedied, the Department shall notify ACC's Board of Directors.

B. Monthly Reconciliation Statement

No later than thirty (30) days after the end of each successive Quarter during the term of this Agreement, ACC will submit a Monthly reconciliation statement setting forth its actual expenses for the Quarter on a Budget line item basis, reconciling its projected expenses on a Budget line item basis, as projected for the same Quarter with its actual expenditures for Budget line items (the "Reconciliation Statement"). The Reconciliation Statement shall contain both projected expenses and the actual expenditures for such for each Budget line item set forth Operating Budget annexed hereto as Exhibit B. ACC shall also submit to the Department financial reports each Quarter, together with its invoices, in a form approved by the Department, which shall include, but not be limited to, a "sources and uses" Report for the Program Services under this contract, and, a revenue sources and application statement for donations, special projects and capital projects in such form as the Department may require. In addition, ACC shall submit on such basis as the Department may require, a report on dog license fees collected during the Monthly reporting period and shall remit all revenues therefrom to the Department. Failure of ACC to timely submit required reports may be deemed a breach of contract and shall have a minimum of forty-five (45) days to remedy. In case the breach is not remedied, the Department shall notify ACC's Board of Directors before taking any action based on such breach. Monthly reports will also include all sources of ACC revenue and application thereof to expenses of ACC. The City shall review the Monthly Reports, including its comprehensive Reconciliation Statement of projected and actual expenditures, and such other documentation and information as the City may deem appropriate (including, without limitation, sources and uses for all revenues and expenditures of ACC during the Quarter covered by such report, information derived from site visits, and may disallow payment for services and/or expenses which were not rendered, authorized or documented in accordance with the terms of this Agreement.

- C. Monthly, together with its Reconciliation Statement, as part of its total Financial report for the Quarter, ACC shall send a report specifying all fees and collections of other revenue received by ACC and all revenues collected on its behalf by any third parties during the Monthly reconciliation period covered by the Monthly reconciliation statement submitted hereunder, and the actual or planned application thereof to its expenses. The Department shall notify ACC of any expense deemed to be disallowable under the contract to the extent of City funding.
- D. Monthly Reports submitted by ACC will be reconciled by the Department through the examination of ACC records and site visits. The Department may disallow expenditures for which reimbursement is requested hereunder that were not made in accordance with the requirements of this Agreement, and shall notify the Corporation of any expense disallowed by the Department.
- E. Annual and Audited Financial Reports

Within forty five (45) days after the end of each City Fiscal Year occurring during this Agreement, or within forty five (45) days after the termination or expiration of this Agreement, ACC shall furnish an annual report in form satisfactory to the Department, and thereafter, within a period ending seven (7) months thereafter, or earlier upon its submittal to the ACC Board of Directors, an audited financial report, certified by a CPA, containing, without limitation, all notes and the auditor's opinion or management letter, and prepared in accordance with generally acceptable accounting principles ("Annual Audited Financial Report") and such report shall cover its fiscal operations during the preceding City Fiscal Year, occurring in whole or in part, during this Agreement, and such reports shall include a comprehensive statement of actual expenditures and revenues generated, in such form as to indicate sources of funds and the application thereof Program services.

F. Final Financial Report

ACC shall submit, no later than sixty (60) days after the expiration of the Term of this Agreement, a Final Financial Report detailing all its cumulative charges applicable to this Agreement, specifying the charges for each Shelter and each of the other facilities included under this Agreement. The Final Report shall contain a summary of all PS and all OTPS expenditures for each such Shelter and Admissions Facility location. All invoices related thereto and other financial records maintained in accordance with generally accepted accounting principles by ACC in connection therewith shall be retained by ACC and made available to internal and external auditors, or for review by the Department. The Final Report shall show the calculation of interest earned by ACC for all funds advanced hereunder to ACC. If ACC submits a supplemental claim, such

claim shall be accompanied by all supporting documentation. The Final Report shall be subject to audit by designees of the Department, in accord with generally accepted accounting principles, but in no event shall ACC use such audits by the Department to challenge or refute any audit or finding of the City Comptroller. The City shall review the Final Report, the comprehensive statement of actual gross expenditures and revenues generated, and such other documentation and information as the City may deem appropriate, and may disallow payment for services and/or expenses which were not rendered, authorized or documented in accordance with the terms of this Services Agreement.

- G. Other Reports. ACC shall disclose and describe to the Department all reports that are prepared by or on behalf of ACC, and, except as otherwise specifically provided herein, shall provide copies of such reports to the Department upon completion of such reports, or upon submission of such reports to any members of its Board of Directors, whichever shall occur earlier. Failure of ACC to submit required reports may be deemed a material breach of contract, providing grounds for termination of this Agreement. ACC shall also submit a true copy of all reports submitted to the New York Bureau of Charities by ACC within two weeks of each such submission. ACC shall provide other or additional reports as the Department may request. ACC will provide written responses to any findings of deficiencies under this Agreement within a time as agreed upon by both Parties but no later than 60 days from when findings are submitted. Such responses will include financial accounting or other substantiation relevant to the matters raised by the findings.
- H. Equipment Reports Provisions Survival from First Renewal Agreement, as Amended. If, at the time that this Agreement supersedes the First Renewal Agreement, as amended, the submission of certain documents and Equipment reports due or to become due under the First Renewal Agreement, as amended, are due after this Agreement is in effect, then such documentation and reports that would have otherwise been due had this Agreement not superseded the First Renewal Agreement, as amended, are hereby deemed to be reports due under this Agreement as if the requirements for their submission had been fully set forth herein.

[ARTICLE VIII INTENTIONALLY DELETED]

IX. TERMINATION PAYMENTS.

In the event the Department and/or City terminates this Agreement in whole or in part pursuant to any provision herein, for any reason or for no reason, prior to the expiration of the term of this agreement as contemplated herein, then, at the election

of the Department and/or City, (i) if such termination is prior to the purchase, upon demand, ACC shall assign the Contract of Sale and Purchase of the Queens Site to the City, acting by and through the Department, or to its designated operator of the Program; (ii) if such termination is after the sale and during the design or construction phase of the Queens Full-Service Shelter project, or during the operational phase of the Queens Full-Service Shelter, then ACC shall facilitate the transfer of ownership and the project to the City, or to its designated operator of the Program, upon demand by the Department, and at a nominal price.

X. DEFENSE AND INDEMNIFICATION BY THE CITY

- A. Indemnification shall be as stated in Article 8 of Appendix A to this Agreement, as limited by this Article: Notwithstanding anything to the contrary contained herein, the City is not obligated to defend, hold harmless or indemnify ACC, its employees, agents, officers, directors, volunteers or subcontractors as a result of any allegation or finding of negligence, intentional tortious conduct, or fraud as specifically otherwise provided below in this Article.
- B. Subject to the conditions set forth below, the City shall defend ACC, its employees, officers, directors, and volunteers (i) in the event both the City and ACC are sued in regard to the seizure of any animal pursuant to an order of the Commissioner of the Department of Health and Mental Hygiene or other applicable City agency, including, without limitation, the New York City Police Department (“NYPD”), where the issue in question is the propriety of Commissioner’s Orders pertaining to the services required to be performed by ACC pursuant to this Agreement to the extent that ACC was acting within ACC’s authority as an agent of the City in carrying out ACC’s obligations hereunder, all to the extent that ACC is acting within the scope of any such order or of a decision of the Office of Administrative Trials and Hearings (“OATH”) services on its part required to be performed pursuant to this Agreement, including, without limitation, issues with regard to ACC performing services as the holding agent, pursuant to the New York City Administrative Code Section 14-140, of those animals seized by NYPD, and in any case, where ACC has been sued based on challenges to the seizure, or the spaying or neutering of an animal if such spaying or neutering was pursuant to applicable law requiring such spaying or neutering as part of ACC’s performance of the services required to be delivered pursuant to this Agreement. Such defense shall not be provided to ACC or any of its employees, agents, officers, directors and volunteers in the event there is a related action for money damages arising out of, or as a result of, any allegation or finding of negligence, intentional tortious conduct, or fraud in connection with of ACC, or where the City’s Corporation Counsel determines there is a conflict of interest.

- C. The defense provision set forth in this Article shall in each case be conditioned upon the following conditions: (i) ACC's representative shall deliver to the General Counsel of the Department or his/her designee the original or a copy of any summons, complaint, process, notice, demand or pleading served on ACC prior to a required response or court appearance, immediately after receipt of such documents, or after service thereof upon ACC; and (ii) ACC shall cooperate fully in aiding the City to investigate or defend any and all claims, actions and proceedings.
- D. The Corporation Counsel of the City of New York shall act as attorney in connection with and shall control the defense of all claims or actions or proceedings within the purview of subsections B and C above, and ACC shall work cooperatively itself, and through its counsel, to assist the City in the defense of such claims and actions, provided that the Corporation Counsel may designate outside counsel in accordance with law and City policy.
- E. Nothing in this Agreement shall require representation or indemnification by the City for acts taken by ACC, its employees, agents, officers, directors, and volunteers, which the City's Corporation Counsel determines are outside the scope of services provided pursuant to this Agreement.
- F. Nothing contained in this Article X is intended to, nor shall it be interpreted as, inuring to the benefit of third parties.

XI. DATA SECURITY, CONFIDENTIALITY, PUBLICITY AND TRANSITION ASSISTANCE

A. Data Security Measures

In addition to the Confidentiality provisions contained in Appendix A to this Agreement, if required in connection with any software modification or enhancement services, ACC will cause all persons, including individuals or corporate employees, who modify or enhance or create new versions of software to be used to carry out the services to be delivered hereunder to execute either a non-disclosure agreement ("NDA") in the standard form required by the Department as a pre-condition of their performance of any services or activities in connection with any software services that they provide in connection with this Agreement, and ACC will cause its subcontractors to sign Non-disclosure Agreements in such form as the Department may require before his or her commencement of project services. In addition, if the project for which ACC is engaged requires the transmission and storage of data deemed sensitive or confidential by the Department, then ACC's information and Technology division must comply with such security clearances as

may be required by the Department and must comply with security protocols promulgated by the Department's Division of Informatics, Information Technology, and Telecommunications ("DIIT").

B. Data Security and Confidentiality

ACC must take affirmative steps to ensure that all the Department's confidentiality and security protocols are scrupulously observed and shall respond to all the Department inquiries regarding security and confidentiality of the information furnished and work products generated in connection with this Agreement and take all remedial security measures required by the Department if any breaches of its obligations under this Security and Confidentiality provision should occur. ACC shall treat all information and data furnished to it by the Department, the New York City Police Department, OATH, or any other City entity or employee or agent, or otherwise obtained or prepared by ACC concerning the animals to be admitted to the shelters and admissions facilities hereunder and the ancillary data services and reports required in connection therewith pursuant to this Agreement as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so, after written approval by the Department's authorized representative in connection with ACC's performance of this Agreement, or in any governmental filings or applications.

- C. Security of Transmissions.** If any services undertaken by ACC requires the transmission or storage of electronic data that is subject to privacy and confidentiality requirements pursuant to this Agreement or that utilizes City-owned software, ACC will cooperate and work with the Department's DIIT on security measures and will implement data security and data management protocols required by DIIT to ensure that the transmission of electronic data and reports and the application usage of such data internally within ACC's systems are secure in accordance with the Department's data security and data management protocols. Prior to data transmissions and usage in connection with such projects, DIIT will review ACC's system and usage and make recommendations for any changes that must be made, and ACC will make, and thereafter maintain, such data security and data management changes in its applications and system to satisfy the Department that its system and applications meet the security standards of the Department and such applications and systems of ACC must be certified as secure by the Department before transmission of the data. Prior to transmission of any data hereunder, ACC and the Department must permit such the Department's DIIT Information Security Team to review and certify that ACC can meet the Department's DIIT security standards for the data security and management to be provided by ACC under this Agreement. The provisions contained in this subsection shall survive any expiration or other termination of this Agreement.

D. Publicity.

ACC shall not give any interviews, issue any press releases, make statements to news media, post any social media or otherwise disclose or release any information to any media that is confidential or that may be reasonably considered to be confidential, without the prior review and written consent of the Department. Information related to positive news about routine, individual Adoptions; fundraisers; and other positive messaging regarding the day-to-day operations of ACC shall not require prior review and written consent of the Department. ACC does not need prior consent of the Department in order to update its website with performance data that are routinely posted there, or to post those routinely-updated performance data on social media such as Facebook, if those data are posted without an accompanying press statement, provided and on condition that ACC furnishes the content of such postings to the Department before posting. Posting data on social media such as Twitter or other services that push news out is subject to the requirements of Section 5.08(D) of Appendix A. ACC will cause its officers, employees, subcontractors, and agents to observe the requirements of the foregoing provision when acting in their capacity as an officer, employee, subcontractor, and agent of ACC. The City shall respond to ACC's request for consent under this provision within two business days, unless the circumstances compel a more immediate response, or the subject matter is deemed by the Department to require additional time to deliberate the effect of such consent by consulting with an expert in the field, in which case, the amount of time shall be extended. A response by the City within two business days indicating that it is reviewing ACC's request for approval will not be deemed consent. The provisions contained in this subsection shall survive any expiration or other termination of this Agreement. The foregoing shall not apply to ACC's board meetings or any other meetings that are open to the public.

- E. Transition Assistance. If at the expiration, or earlier termination of this Agreement, the services required to be provided hereunder are to be provided by a new service provider, ACC will cooperate in all manner with the transition to the new service provider, which may take place over a period of up to 36 months. To the extent funded by the Department through a budget modification, such cooperation shall include providing records, information, and training to the new service provider's staff where appropriate to prepare the new service provider to carry out the services provided by ACC, and in general, assisting in all manners to enable such replacement service provider to carry-out the services performed by ACC under this Agreement, all in accordance with the Department's direction and to ensure a smooth transition. Upon request by the department, ACC will share records, information and training materials with the replacement service provider. ACC shall not be required to provide to the new service provider any personally

identifiable information of its staff, volunteers, clients (e.g., adopters) or Animal Rescue Partners.

XII. PROGRAM MONITORING AND EVALUATION

A. Monitoring Plan

The Department shall develop and implement a monitoring plan for the program and services to be provided by ACC hereunder. The monitoring plan shall be developed by the Department and shall include all services to be provided by ACC and other requirements of ACC pursuant to this Agreement and will specify clear and understandable standards for ACC's performance. The monitoring plan shall be consistent with this Agreement. ACC shall comply with and fulfill all requirements of the monitoring plan. Such monitoring plan shall contain, without limitation, the following elements, and such other or additional elements as the Department may find to be appropriate or necessary:

- (1) regular veterinary and sanitary inspections of facilities and any other visits necessary to expeditiously carry out the Department's program of rabies observation and control and dangerous dog or other investigations;
- (2) observations by the Department's representatives of animals at ACC's facilities for any evidence of unusual patterns of death or illness that might signal an unusual infectious disease outbreak;
- (3) comprehensive assessments as well as unannounced site visits by one or more representatives of the Department;
- (4) a review of shelter records, policies, facilities, and condition of animals.

ACC shall render all assistance and cooperation to the Department, its employees, representatives and designees in making such inspections and shall assure ready access to all ACC offices and Facilities and all medical, financial or other records and reports relating to the services provided hereunder wherever located.

- B. ACC shall be notified in writing of any deficiencies found during contract monitoring activities or inspection of the facility/site. Any deficiencies noted shall be remedied to the satisfaction of the Department within the time frame established by the Department, or if a plan is needed in the opinion of the Department, the Department shall establish a curative action plan. Failure of ACC to initiate curative action within the time set for curing deficiencies noted by the Department, or failure to initiate and diligently pursue, curative action shall be grounds for declaring ACC to be in breach of its obligations under this Agreement and may be

deemed grounds for termination of this Agreement. Any urgent condition requiring immediate abatement should be remediated to the satisfaction of the Department's representative during the site visit. If the condition is abated immediately, no further action may be required.

- C. The Department shall promptly forward to ACC for appropriate action, all complaints it receives regarding ACC, including but not limited to, complaints concerning adopted animal health, shelter care and those pertaining to actions or lack of action experienced by members of the public in interacting with ACC.

D. Evaluation Criteria

ACC's performance will be evaluated based on its compliance with this Agreement. The evaluation criteria include, but are not limited to: timeliness of services; achievement of level of services; staffing requirements, hiring and retention of professional staff, and continuity; work order procedures and methods; record keeping and reporting; internal financial controls; timeliness and accuracy of fiscal reports, payment invoices, backup documentation, and responsiveness to requests for additional backup documentation and correction requests.

E. Evaluation Procedures

1. Cooperation

ACC shall cooperate fully with the Department regarding the evaluation of the services provided hereunder, and will advise and consult with employees and officials of the Department and any designated program evaluation agent.

2. Inspections

The Department, its employees, representatives and designees, shall have the right at any time and from time to time to inspect the sites where services are performed and to observe the services being performed by ACC. ACC shall render all assistance and cooperation to the Department, its employees, representatives and designees in making such inspections and shall assure the Department ready access to the sites and all medical, financial or other records and reports relating to the services provided hereunder. The Department shall have the responsibility for determining compliance with this Agreement.

3. Program Reviews

The Department may conduct on-site program reviews to evaluate ACC and the delivery of the services. The Department may recommend any necessary corrective action to ACC to remedy problems and/or deficiencies found during

such site visit(s). ACC shall have the opportunity to offer a revised recommendation and shall implement such recommendations agreed upon by the Department and ACC, after discussion between the Parties, no later than thirty (30) days from receipt of such recommendations or agreement on revised recommendations. Such corrective action plan shall address remediation within specified time frames. In addition, ACC shall participate in periodic meetings, at the option of the Department, as conducted by the Department to discuss the services being provided, at no additional charge to the Department.

XIII. MISCELLANEOUS

A. Legal Compliance

Notwithstanding any other provision in this Agreement, ACC remains responsible for ensuring that any service provided pursuant to this Agreement, complies with all pertinent provisions of federal, state or local statutes, rules and regulations, and that all necessary approvals thereunder have been obtained.

B. Confidentiality and Data Security

In addition to the Confidentiality provisions contained in Section 5.08 of Appendix A to this Agreement:

1. All information of a medical nature received by ACC in the course of its performance under this Agreement shall be kept confidential and shall not be disclosed except as permitted by the applicable law and with the written consent of the Department.
2. As used in this Agreement, "Confidential Information" shall mean information disclosed to, or known to, ACC, and to its subcontractors and agents, in connection with the Program Services to be provided pursuant to this Agreement, including, without limitation, the information submitted to ACC, or by ACC to the City, in connection with any controlled substances inventory, use and security, and the methods, business plans, databases, systems, technology, intellectual property, know-how, management, development, operations, products, processes, and services, including, without limitation, information and data relating to research, development, inventions, recommendations, programs, systems, systems analyses, finances, financial statements, financial projections, financing methods, fine collection methods and strategies, sources, system designs, personal information identifying any individual or de-identified information which could lead to the identification of any individual and which was furnished

as part of a dataset provided to ACC or its subcontractors or agents in connection with any project services under this Agreement, terms and conditions of arrangements of any government system relating to secure information transfers, as well as reports, informational lists, which ACC knows or should have known to be confidential. All information disclosed to a party or to which a party has access to in connection with performing the services covered in this Agreement, for which there is any reasonable basis to be believed is, or which appears to be treated by the disclosing party as, Confidential Information shall be presumed to be Confidential Information under this Agreement. ACC agrees, and will cause its subcontractors to agree, that the existence or occurrence of any meetings or discussions between the Parties related in any manner to the Confidential Information will also be considered Confidential Information and will not be disclosed to any third party, except as may be required by law or in any legal proceedings.

4. Confidential Information shall not, however, include information that is:
 - (a) publicly known or becomes publicly known through no fault of the receiving party, or
 - (b) generally or readily obtainable by the public, or
 - (c) constitutes general skills, knowledge, and experience acquired by either party before entering into this Agreement and thereafter.

To the extent practicable, ACC itself, will, and will cause those persons performing project services to mark as proprietary, or transmit and store securely, all information in tangible form. To the extent information in tangible form is not so marked or is conveyed orally, such information may still be deemed to be Confidential Information if there is a reasonable basis to believe, or if the information appears to be treated by the disclosing party as, Confidential Information notwithstanding the omission of any such markings. ACC shall cause its employees and subcontractors to acknowledge that they may learn Confidential Information (as defined herein) relating to services to be provided hereunder. ACC agrees for itself and shall cause its subcontractors to agree, that it/they will not disclose, use, or reproduce, or authorize any third party to disclose, use, or reproduce any such Confidential Information, without the prior written approval of the Department. Notwithstanding the foregoing, ACC may disclose such Confidential Information to officers and employees of ACC as may be required to evaluate and implement the services provided to the City and the Department pursuant to this Agreement.

5. ACC agrees, and will cause its subcontractors to agree, that all documents of any nature pertaining to the activities of the City and the Department that

include any Confidential Information, in its or their possession now or at any time during the Department's evaluation of any services provided, or to be provided hereunder, including, without limitation, memoranda, notebooks, notes, data sheets, records, and the Department computers, software programs, are and shall be the exclusive property of the City and that all copies thereof shall be surrendered to the Department, or its designee, upon such party's request.

6. Nothing contained herein shall constitute any representation, warranty, or guarantee to ACC with respect to the value or accuracy of any information exchanged or that such exchanged information does not infringe any rights of third parties. The City shall not be held liable for any errors or omissions in the information exchanged or the use of the exchanged information.
7. ACC acknowledges and agrees that a breach by it or one of its affiliates of any of the covenants set forth in this Agreement regarding the confidentiality of Confidential Information, data management, and data security will cause irreparable injury to the City and its functions, for which damages, even if available, will not constitute an adequate remedy. Accordingly, ACC, for itself and its affiliates, agrees that the City, in addition to any other remedy available at law or in equity, shall be entitled to the issuance of injunctive relief (including, without limitation, specific performance) by any court of competent jurisdiction in order to enforce the covenants and agreements contained herein.

B. Data Security

As used in this paragraph, "Data" means personal data collected by ACC from any person served by ACC pursuant to this Agreement that has not been de-identified, including, without limitation, the names, address, email, telephone number and/or images and photos collected by ACC in connection with ACC's performance of the Program Services. ACC hereby acknowledges that DOHMH retains sole ownership of the Data collected in connection with the performance of Program Services hereunder. Such Data shall be held in confidence by ACC, unless the individual identifiable in part through such Data has provided written consent for use of such Data, which may be obtained through an opt-in process acceptable to the Department. Upon the termination of this Agreement for any reason, the confidentiality provisions set forth herein shall, at the option of the Department, continue to apply to all Data maintained by ACC on behalf of the Department and/or shared between ACC and DOHMH pursuant to this Agreement. ACC shall not make, cause to be made, use or sell for any purpose any product or other item using, incorporating, or derived from, the Data other than for the purpose of performing the Program Services or, with

written consent of the identifiable person, for the purpose of fundraising. Upon termination of this Agreement, for any reason, ACC shall return or destroy all Data that ACC maintains in any form, and all copies of the Data in all of its forms. ACC will confirm in writing to the Department ACC's destruction or return of Data within 30 days of the termination of this Agreement. This provision C will survive the expiration or earlier termination of this Agreement.

D. Availability of Reports, Surveys, Audits

ACC shall comply with the records retention requirement in Article 5.02 of Appendix A.

E. Notices

All notices and requests hereunder by either party shall be in writing and, except as otherwise specified in this Agreement, directed to the address of the Parties as follows, or to such other or different address as such party may direct in a notice given as provided in this subsection E:

If to the Department, addressed as follows:

New York City Department of Health
and Mental Hygiene
125 Worth Street, 3rd Floor, WS 3-94, CN-32
New York, New York 10013
Attn.: Deputy Commissioner
Title: Environmental Health

If to ACC addressed as follows:

Animal Care and Control of New York, Inc.
11 Park Place, Suite 805
New York, NY 10007
Attn.: Risa Weinstock
Title: President

F. Affirmation and Insurance

ACC shall complete the affirmation and cause to be completed insurance forms annexed to Appendix A of this Agreement.

G. Americans with Disabilities Act

Animal Care and Control of New York City, Inc.
PIN: 19AA003401R0X00

ACC shall comply with the provisions of the Americans with Disabilities Act of 1990, and shall submit and implement a compliance plan with such Act in accordance with the Rider annexed to Appendix A to this Agreement.

H. Conditions Precedent.

1. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.
2. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

I. Headings.

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

J. Attachments

The following Appendices, Exhibits, and other attachments are hereby made a part of this Agreement:

Appendix A: General Terms and Conditions Governing Contracts for Consultants, Professional, Technical, Human and Client Services

Appendix INS: Additional Insurance Requirements for the Construction of the Facility

Tax Affirmation

Certification by Insurance Broker or Agent

Whistleblower Protection Expansion Act Poster

ADA Rider

Iran Contract Divestment Rider and Certification of Compliance with Iran Divestment Act

HireNYC Requirements

Exhibit A: Scope of Services

Exhibit B: Budget

Exhibit C: Queens Full-Service Shelter Site Development by ACC

Exhibit D: Revocable License to Use Certain City-Owned Buildings and Leased Premises

K. Resolution of Conflicts

All actual or purported conflicts between the application of the terms and conditions of the various documents contained in this Agreement (together with their respective appendices, Appendices, schedules, annexes, attachments and riders, as the case may be), shall be resolved in the following order of precedence, such documents constituting the entire Agreement between the Parties:

- 1) The body of this Agreement, including the ADA Rider, Tax Affirmation, Iran Contract Divestment Rider, the Iran Contractor Compliance Form; and HireNYC Requirements ;
- 2) Appendix A;
- 3) Exhibit A: Scope of Services;
- 4) Exhibit B: Budget;
- 5) Exhibit C: Queens Full-Service Shelter Site Development By ACC;
- 6) Exhibit D: Revocable License to Use Certain City-Owned Buildings and Leased Premises.


[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City has caused these presents to be executed in triplicate by the Agency Chief Contracting Officer of the Department of Health and Mental Hygiene, and ACC has caused these presents to be executed in triplicate by the duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

**THE CITY OF NEW YORK
Department of Health and Mental Hygiene**

BY: 

**CONTRACTOR:
ANIMAL CARE AND CONTROL OF NEW
YORK CITY, INC.**

BY: 

NAME: RISA WEINSTOCK

TITLE: PRES. & CEO

APPROVED AS TO FORM/ CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

Date:

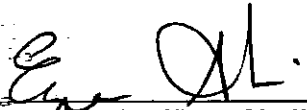
Animal Care and Control of New York City, Inc.
PIN: 19AA003401R0X00

ACKNOWLEDGEMENTS

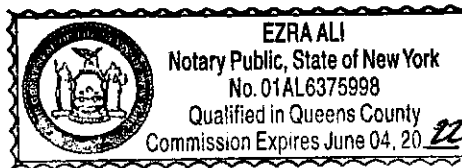
STATE OF NEW YORK)
)
) Queens)
COUNTY OF ~~NEW YORK~~)

ss:

On the 6th day of December in the year 2018 before me, the undersigned personally appeared Oxiris Barbot, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



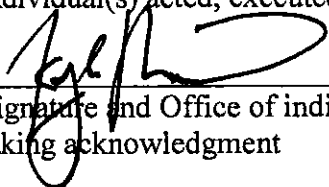
Signature and Office of individual
taking acknowledgment



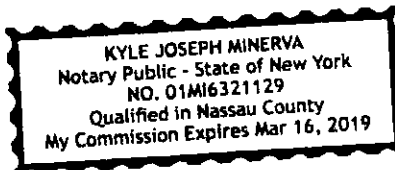
STATE OF NEW YORK)
)
) New York)
COUNTY OF New York)

ss:

On the 28 day of November in the year 2018 before me, the undersigned personally appeared Risa Weinstein, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature and Office of individual
taking acknowledgment



RIDER

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. ACC shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs or activities pursuant to this Agreement. To ensure ACC's compliance with the ADA during the term of this Agreement ACC shall prepare a plan ("Compliance Plan") which lists its programs site(s) and describes in detail how it intends to make the services, programs or activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s) listed. In the event the program sites are not readily accessible and usable by individuals with disabilities, ACC shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services, programs or activities set forth in herein readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, audial, or mobility disabilities. ACC shall submit the Compliance Plan to the ACCO of the Agency for review within 10- days after execution of this Agreement. Upon approval by the Agency of the Compliance Plan, ACC shall abide by the Compliance Plan to make the services, programs or activities accessible and usable by the disabled. Implementation of the Compliance Plan shall be in accordance with the schedule for Compliance agreed upon by the Agency and ACC.

ACC's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of the Agreement and result in the City terminating this Agreement.

**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR
NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

BIDDER'S CERTIFICATION

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated:



 SIGNATURE

 RISA WEINSTOCK

 PRINTED NAME

 PRES. & CEO

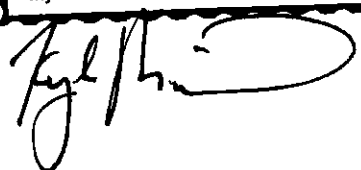
 TITLE

State of New York)
 County of New York) ss:

Subscribed and sworn or affirmed to before me this 28 day of November 2018
 by Risa Weinstock

Notary Public State of New York

KYLE JOSEPH MINERYA
 Notary Public - State of New York
 NO. 01M16321129
 Qualified in Nassau County
 My Commission Expires Mar 16, 2019



**HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS**

Introduction

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place.

HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

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APPENDIX A

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN, AND CLIENT SERVICES**

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. "Agency Chief Contracting Officer" or "ACCO" means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. "Agreement" means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. "City" means the City of New York.

D. "City Chief Procurement Officer" or "CCPO" means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. "Commissioner" or "Agency Head" means the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.

F. "Comptroller" means the Comptroller of the City of New York.

G. "Contractor" means the entity entering into this Agreement with the City.

H. "Days" means calendar days unless otherwise specifically noted to mean business days.

I. "Department" or "Agency" means the City agency or office through which the City has entered into this Agreement.

J. "Law" or "Laws" means the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. "Procurement Policy Board" or "PPB" means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.

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L. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 *et seq.*

M. “SBS” means the New York City Department of Small Business Services.

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

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

Section 2.03 Certification Relating to Fair Practices

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

Section 2.04 Disclosures Relating to Vendor Responsibility

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Contractor acknowledges that the Department's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.

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Section 2.06 Authority to Execute Agreement

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

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E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

Section 3.02 Subcontracting

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal (www.nyc.gov/pip).

2. *Approval when subcontract is greater than \$20,000.*

a. The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.¹

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

¹ Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

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d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

C. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

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D. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

F. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

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Section 4.02 Employees and Subcontractors

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

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Section 4.04 Minimum Wage; Living Wage

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

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4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

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any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

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3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:

1. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

1. 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:

a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability,

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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;

b. 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;

c. 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;

d. 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;

e. 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 SBS, Division of Labor Services ("DLS"); and

f. 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.

2. 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 Commissioner to impose any or all of the following sanctions:

- a. Disapproval of the Contractor; and/or
- b. Suspension or termination of the Agreement; and/or
- c. Declaring the Contractor in default; and/or

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- d. In lieu of any of the foregoing sanctions, imposition of an employment program.
3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.
4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 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 Section 4.05(D)(4).
5. 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 Section 4.05(D)(5).
6. Nothing contained in this Section 4.05(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.

Section 4.06 Paid Sick Leave Law

A. Introduction and General Provisions.

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.² Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

² Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

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2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

B. Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

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3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLL does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

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2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;

3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;

5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;

6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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F. *Records.* An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of

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the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

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ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

The Contractor agrees to maintain separate and accurate books, records, documents, and other evidence, and to utilize appropriate accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

Section 5.02 Retention of Records

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules ("CPLR") 4539(b), including the requirement that the reproduction is created in a manner "which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes." Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

Section 5.03 Inspection

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records, documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If

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observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

Section 5.04 Audit

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the

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Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

Section 5.06 Electronic Records

As used in this Appendix A, the terms “books,” “records,” “documents,” and “other evidence” refer to electronic versions as well as hard copy versions.

Section 5.07 Investigations Clause

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

B.

1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or 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;

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

C.

6. 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.

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

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

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

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

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

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

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

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

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

F. Definitions

1. The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term “person” as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

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

4. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure

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demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

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E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

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D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Section 6.03 Pre-existing Rights

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

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ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

Section 7.02 Workers' Compensation, Disability Benefits, and Employers' Liability Insurance

A. The Contractor shall maintain workers' compensation insurance, employers' liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor's workers' compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers' Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
3. Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;
8. Other forms approved by the New York State Workers' Compensation Board; or

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9. Other proof of insurance in a form acceptable to the City.

Section 7.03 Other Insurance

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

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D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

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C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office

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of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such

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entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

**ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND
INDEMNIFICATION**

Section 8.01 Reasonable Precautions

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by negligence, any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade

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secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

A. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

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D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

Section 9.02 Changes Through Fault of Contractor

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by the City Without Cause

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

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C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.02 Reductions in Federal, State, and/or City Funding

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of

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the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

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5. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

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Section 10.04 Force Majeure

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

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1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

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Section 10.07 Liquidated Damages

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

Section 11.02 Electronic Funds Transfer

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor 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 Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the

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commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 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 best interest of the City.

- C. This Section 11.02 is applicable to contracts valued at \$25,000.00 and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's

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work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

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2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

3. Agency Head Determination. Within 30 Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

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2. Agency Response. Within 30 Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not

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have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of

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time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

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Section 12.06 General Release

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

Section 12.07 No Waiver

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

Section 13.02 All Legal Provisions Deemed Included

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

Section 13.04 Compliance With Laws

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

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Section 13.05 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

Section 13.06 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the

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Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

Section 13.07 Voter Registration

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of

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supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section 13.06, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. *Assistance in Completing Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

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3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. *Required Statements.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

- a. seek to influence an applicant's political preference or party designation;
- b. display any political preference or party allegiance;
- c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
- d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

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Section 13.08 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 13.09 Religious Activity

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 13.10 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq.*, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

Section 13.11 MacBride Principles

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

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Section 13.12 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.
2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.
3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such

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pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.13 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

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ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

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C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.


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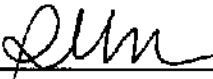
AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, 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, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder *[below]*
Animal Care & Control of NYC, Inc.
Address 11 Park Place, Ste 805
City NY State NY Zip Code 10007

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____
- B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____
- C - Corporation
EMPLOYER IDENTIFICATION NUMBER 

By 
Signature
Pres. & CEO
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers, or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

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SCHEDULE A

Article 7 -- Insurance		
Types of Insurance (per Article 7 in its entirety, including listed paragraph)		Minimum Limits and Special Conditions
■ Workers' Compensation	§7.02	Statutory amounts.
■ Disability Benefits Insurance	§7.02	
■ Employers' Liability	§7.02	
■ Commercial General Liability	§7.03(A)	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees, and</p> <p>2. _____</p> <p>3. _____</p>
■ Commercial Auto Liability	§7.03(B)	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
■ Professional Liability/Errors & Omissions	§7.03(C)	<u>\$1,000,000.00</u> per claim
■ Crime Insurance	§7.03(D)	Contractor shall maintain a Fidelity Bond or Crime Insurance in accordance with section VI(C) of the Agreement. Contractor shall

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	maintain such coverage from the date directed by the Commissioner, which may be after the Commencement Date. City of New York is a loss payee as its interests may appear
<input type="checkbox"/> Cyber Liability Insurance §7.03(E)	<i>[If there is a significant cyber risk, please consult with the Law Department about specific insurance requirements.]</i>
<input type="checkbox"/> [OTHER]	<i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i>
<input type="checkbox"/> [OTHER]	<i>[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]</i>
Section 10.07 – Liquidated Damages	
<ul style="list-style-type: none"> • Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal • _____ 	<p>\$100 per day</p> <p>\$ _____</p>
Section 14.04 – Notice	
Department’s Mailing Address and Email Address for Notices	
Contractor’s Mailing Address and Email Address for Notices	

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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 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.

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WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER

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REPORT
CORRUPTION, FRAUD, UNETHICAL CONDUCT
RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT
CALL THE NYC DEPARTMENT OF INVESTIGATION
212-825-5959

DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:
New York City Department of
Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:
www.nyc.gov/doi

All communications are confidential



Or scan the QR Code above
to make a complaint

**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

EXHIBIT A
SCOPE OF SERVICES
CONTRACTOR: NEW YORK CITY ANIMAL CARE AND
CONTROL, INC. (“ACC”)

PIN: 19AA003401R0X00

34 Year Contract

ACC will provide the following animal control and related public health services:

1. Animal Control and Seizure Services

- 1.1 ACC shall provide services under this Agreement, which shall include, but not be limited to, seizing animals deemed to be a threat to the public health, providing and operating facilities to reunite certain animals with owners, shelter, hold, examine, test, treat, spay, neuter, place for adoption, assure humane care and disposition of, and otherwise control animals which ACC or the City of New York has seized or accepted for shelter.
- 1.2 Animal Surveillance and Capture. ACC will respond to complaints or other information concerning the presence of strayed and abandoned animals, if such response can be reasonably perceived as necessary to ensure the health and safety of New York City residents, including in such responses, when appropriate and without limitation, unleashed dogs, and non-exotic cats whose owners are not identified, vicious and dangerous animals, animals that have bitten, rabid or suspected rabid animals, prohibited or exotic animals, venomous reptiles and bats, within the five boroughs of New York City and attempt to humanely remove such animals as may be appropriate. Such response to complaints regarding public health emergencies will be within 24 hours of receipt of complaint during normal hours of operation or on the next day of normal hours of operation, unless there is a threat to public safety and health, in which event, ACC will respond in a manner and with the immediacy appropriate to the level of public safety and health risk posed by the event. ACC will provide the above services in accordance with applicable public health and safety laws and regulations, specifically, the New York City Health Code Article 161, New York City Dog Licensing Law, Title 17 of the NYC Administrative Code and applicable provisions of the NYS Agriculture and Markets Law.
- 1.3 Animal Seizure. ACC will, when directed by the Department or the New York City Police Department (NYPD), and subject to applicable law, assist in seizure, seizing and capturing when appropriate, all lost, strayed, and abandoned animals, including, without

limitation, unlicensed or unleashed dogs, non-exotic cats whose owners are not identified, animals that are hoarded, vicious and dangerous animals, animals that have bitten, rabid or suspected rabid animals, prohibited or exotic animals, wild animals (including, without limitation, venomous reptiles and bats) from persons in possession of such animals, and from places within the City both public and private. ACC will provide the above services in accordance with applicable public health and safety laws and regulations, specifically, the New York City Health Code Article 161, New York City Dog Licensing Law, Title 17 of the NYC Administrative Code and applicable provisions of the NYS Agriculture and Markets Law, the NYS Environmental Conservation Law, and federal laws governing animals, as applicable.

- 1.4 It is further, provided, however, that if a member of the ACC staff who is dispatched by the NYPD or at the Department's direction to seize, or assist the NYPD in the seizure of, an animal, encounters in such attempt unforeseeable and dangerous circumstances that would pose a high risk to the safety or health of the ACC staff member for which no foreseeable mitigation was available through appropriate training and/or suitable equipment, then such failure to seize shall not be deemed to be a breach of ACC obligations pursuant to this Agreement. Each such occurrence of failure to seize shall be the subject of an ACC incident report, detailing the incident and submitting it to the Department within 10 days after an incident occurrence, and the Department and ACC shall work together to develop and implement alternate means and methods of seizure in the circumstances presented in each such instance, unless the likelihood of repetition is deemed by the parties to be too remote or such alternate means and methods are economically unfeasible.

If a training plan is requested by the Department, within 14 days after such request, in addition to submitting an incident report, ACC shall also develop appropriate staff training syllabi for the Department's input and approval in response to such occurrences, and ACC shall implement such training within 21 days of the Department's approval of a final training plan, or by such later date as the parties may agree upon within such 21 day period. In the event that the Department categorizes the event as an urgent training need because it affects the health and safety of the public, then such training shall be implemented on a more expedient timeline. It is provided, further, however, that if the training requires external resources, or the necessary training expertise exceeds ACC's training capacity, the Department may augment ACC's expertise and provide the necessary expert to design or give such training and will endeavor to augment the resources, if it deems such augmentation necessary.

- 1.5 Lost, Stray, Homeless, and Abandoned Animals. ACC will accept at its facilities all animals to the extent allowed by applicable law, or as otherwise requested by the Department.

1.6 Telephone Center and Hours of Service.

- 1.6.1 Central Telephone Service. For all ACC facilities, ACC will publish and maintain a central telephone number so the public (or residents, just not limited to “citizens”) can call for a schedule of services at any and all of its facilities. Additionally, ACC will establish, staff and advertise a telephone number for receiving complaints and inquiries concerning animals described in paragraph 1.2 above, and the hours of operation will be 12 hours per day, 7 days per week from 8:00 a.m. through 8:00 p.m., or such other and additional hours as the Parties may agree upon in a written document, signed on behalf of the Parties by their authorized representatives. A recorded message will be placed on the above referenced telephone during non-working hours, and will permit callers to leave a message and/or call back number outside of the hours of operation. Records must be utilized so that all calls are documented and the disposition of the action to each call is properly entered. ACC will make these records available for review by the Department upon request. Such telephone system and record keeping methods will be subject to approval by the Department. Notwithstanding the foregoing, ACC may fulfill any or all of the requirements herein through the services of “311”, provided that ACC furnishes to the Department for its approval a copy of the script “311” operators will use for animal related complaints.
- 1.6.2 Field and Dispatch Services. Field Services will be available seven (7) days a week for twelve (12) hours per day from 8:00 a.m. through 8:00 p.m. ACC will provide dispatch services seven (7) days a week in conjunction with Field Services and such Dispatch services will be available from 8:00 a.m. through 8:00 p.m. ACC will have dispatch personnel available to both receive telephone complaints, service requests and inquiries directly from the public and through 311, which will dispatch such emergency calls on a prioritized basis in accordance with ACC procedures, approved by the Department, to the fleet of vehicles, or, when appropriate, to the NYPD or other entity for referral.
- 1.6.3 Emergency Response Service Calls. For all other time frames, on a 24 hour a day basis, ACC will provide personnel and equipment necessary for on-call animal emergency response services to handle special requests from the Department (including the Poison Control Center) and NYPD to capture and seize animals as specified in Section 1.3 above, and have said animals held at an animal shelter for rabies observation or have the animal made ready for testing for rabies, as necessary. ACC will provide to the Department and NYPD a separate telephone number for direct contact. Animal seizure services will be provided seven days a week from 8:00 a.m. through 8:00 p.m.

- 1.6.4 Full-Service Shelter Hours. All ACC Full-Service Shelters will be open to the public from 8:00 a.m. to 8:00 p.m. for return to owners, lost and found walk-ins and other customer service functions. At a minimum, one of the Full-Service Shelters must be open to the public from 8:00 p.m. to 8:00 a.m. for the sole purpose of receiving animals. For additional information with regard to the hours of operation required under applicable City Administrative Code provisions, and implementing rules and regulations, as amended from time to time of certain Full Service Shelters, see Section 2.3 below in this Scope of Services.
- 1.6.5 Queens Admissions Facility Hours. ACC will keep the Queens Admissions Facility open to the public daily from 10:00 a.m. to 6:00 p.m. and on an on-call basis via field services for an additional 4 hours during the hours from 8:00 a.m. to 10:00 a.m. and from 6pm-8pm from the beginning of this Agreement and until such time as the New Queens Full-Service Shelter becomes operational, unless the applicable provision of the Administrative Code pertaining to such hours is amended, in which case the hours of operation shall be as amended.
- 1.6.6 Bronx Admissions Facility Hours. ACC will keep the Bronx Admissions Center open to the public daily from 10:00 a.m. to 6:00 p.m. and on an on-call basis through field services for an additional 4 hours during the hours from 8:00 a.m. to 10:00 a.m. and from 6:00 p.m. to 8:00 p.m. for as long as such Admissions Center is needed during the term of this Agreement, unless different requirements pursuant to applicable City Administrative Code provisions, and implementing rules and regulations, as amended from time to time provide for different hours. However, if the City provides a Full-Service Shelter in the Bronx to replace the Admissions Center, then ACC will close its operations at the Bronx Admissions Center and move its operations to a new Full-Service Shelter in lieu of such Admissions facility when the replacement Bronx Full-Service Shelter is designated as ready for occupancy by the Department.
- 1.7 ACC will seize and hold animals in accordance with applicable Federal, State, and City laws and implementing regulations as they may be amended. ACC will ensure primary enclosures provide for adequate ventilation, temperature, and lighting, as well as sufficient space to allow each animal adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn around, and lie down with its limbs outstretched, for animals to sit, sleep and eat away from areas of their enclosures where they defecate and urinate and for the efficient elimination of excretions, water, and waste material in order to keep the animal dry and prevent the animal from coming into contact with these substances, absent exigent circumstances, and subject to available space constrictions in ACC facilities.

- 1.8 ACC shall maintain holding periods that are not less than the minimum holding periods required pursuant to applicable law, as the same may be amended.
- 1.9 ACC may require all shelter and field personnel who will handle or be in contact with animals suspected of rabies be immunized against rabies according to recommendations appearing in the Centers for Disease Control and Prevention (“CDC”) Morbidity and Mortality Weekly Report (“MMWR”), or such other CDC recommendations or advice as may supersede the current recommendations issued by the CDC. Personnel who are unwilling or unable to be pre-immunized against rabies must sign a waiver so stating and releasing ACC and the Department from any and all responsibility for any possible harm.
- 1.10 In accordance with applicable law, ACC shall make every reasonable effort to trace the owners of licensed or otherwise identified animals with identification collars or microchips and to notify owners, caregivers, veterinarians, and other implanting facilities whose contact information or name is able to be identified by ACC. ACC will maintain a procedure to trace identifiable information and notify owners within 24 hours of entry into ACC’s shelter system. All animals entering a shelter or Admissions facility must be scanned for a microchip by a universal scanner that detects all microchip frequencies.
- 1.11 With reference to the potential for changes in New York City animal care and control needs and regulatory enactments over the term of this Agreement, starting six months prior to the end of each three Fiscal Years, and in conjunction with the development of new annual line item budgets for operating expenses and maintenance to be added to Operating Expenses set forth in the Budget (Exhibit B), the parties will review the animal care and control requirements set forth in this Scope of Services and may agree in a writing signed on behalf of the parties, as an amendment to this Agreement, to adjust the type and levels of services required hereunder with reference to factors that include the expanded facilities that are to be made available to ACC pursuant to this Agreement and other relevant factors, if any occur during the term of this Agreement, to animal care and control needs of the City, as a matter of policy and applicable laws, rules and regulations.

2. Related Services

2.1 ACC will provide related services as follows:

- 2.1.1 The City will continue its existing contract with the Department of Sanitation and will continue to provide services of a qualified contractor for the removal of all dead animal bodies from the shelter facilities. ACC will properly and safely dispose of all regulated hazardous and/or medical waste pursuant to all Federal, State and City laws, and shall file all reports required by applicable laws, rules and regulations.

2.1.2 ACC will operate Full-Service Animal Shelters in the boroughs of Manhattan, Brooklyn, and Staten Island. These shelters will be open to the public 7 days a week, on a 12 hours a day schedule, every day of the year excluding such holidays as may be approved for closure by the Department. ACC will maintain access to a Full Service Shelter, currently Manhattan, (or another Full Service Shelter as agreed upon by ACC and the Department) 24 hours a day to accept animals transported by the public, the New York Police Department (NYPD) or the Department and/or its designee(s), including the Department "on-call" emergencies. If and when the Queens Full-Service Shelter, and if and when the Bronx Full-Service Shelter, receives a Certificate of Occupancy from the Department of Buildings, as applicable to the specific building for which a Certificate of Occupancy is issued, ACC will arrange to transport all equipment and animals from the affected Admission Facility to the new Shelter and will then perform all of the duties required of a Full-Service Shelter pursuant to this Agreement at such new location after each such transition to the new Full Service Shelter. As soon as it is practicable prior to a Certificate of Occupancy being obtained, the parties will collaborate to determine a timeline for the transition to the new shelter and will plan together for an orderly transition which vacates the affected Admission Facility as soon as is practicable, with due consideration given to both the wind-down plan and an orderly start-up sequence.

2.1.3 Professional Veterinary Care

- (a) ACC will provide professional veterinary care at the Full Service Shelters and at the Admissions Facilities, performed by New York State licensed veterinarians, or licensed veterinary technicians, acting under the supervision of licensed veterinarians, employed or otherwise engaged by ACC, in accordance with applicable law, unless, due to exigent circumstances and/or staffing constraints beyond the control of ACC, professional veterinary care for animals in need of immediate care cannot be served at a particular ACC facility, and in such event, ACC will transport such animal to a Full Service Shelter for such veterinary services where the animal can receive such care. Such transport to an alternate facility will be performed with the promptitude appropriate to the medical circumstances. Trained animal care assistants may assist veterinarians or licensed veterinary technicians as needed to provide routine care. ACC will provide staff coverage at all its Full Service Shelters, including, at a minimum, one NYS licensed veterinarian(s) on-site at each of the Full Service Shelters during all hours that animals are received at the shelter, unless exigent staffing circumstances do not support such staffing plan and the Department has been informed and approves ACC's staffing remedy.
- (b) To the extent of funding for Veterinary positions contained in Part I of the

Budget, ACC will work diligently to recruit and hire sufficient New York State licensed Veterinarians to be able to add a sufficient number of licensed Veterinarians to its staff that will permit scheduling of a licensed Veterinarian at all intake facilities during all hours of service where animals are being admitted.

- (c) ACC will keep the Department apprised of its professional veterinary staffing hiring efforts to recruit and retain competent Veterinarians and qualified Veterinary technicians.

2.2 Animal Care

Animals within the possession of ACC will be cared for in a humane manner in accordance with applicable law. ACC will use its best efforts to contain and control the spread of communicable diseases to humans and other animals. ACC will provide for isolation of sick animals and quarantine of animals, as deemed necessary by the Department, or as determined by a licensed veterinarian. Additionally, ACC must provide adequate medical staffing to provide for immediate first aid and treatment as required, including but not limited to timely evaluations, preventive care, diagnosis and treatments to prevent the spread of infectious disease and ensure proper medical care and pain management. ACC shall comply with all applicable provisions and regulations promulgated under the Occupation and Safety Act (“OSHA”), including, without limitation, the requirements for Personal Protective Equipment (“PPE”) to protect its employees from exposure to chemical and biological agents as well as to other potential causes of injury and infection as required or necessary. ACC will work in consultation with a veterinarian to develop and maintain protocols for animal care that will include, without limitation, protocols for adequately separating species to prevent disease transmission between species and for handling infectious disease control and sanitation. All draft protocols shall be submitted to the Department for review and approval prior to implementation. The draft for such protocols shall be submitted to the Department for review by a date that is not more than six months after the commencement date of this Agreement. Upon approval of such protocols, ACC will implement same. Such protocols may be amended from time to time in like manner.

2.3 Adoption Services

- 2.3.1 ACC will provide adoption and rescue services, at its Full-Service Shelters and Admissions facilities (unless restricted by lease) and will promote adoption as a means of placing animals for which animals ACC has done a behavioral assessment, which concludes, after analysis, that it recommends that the animal be placed for adoption. Such behavioral assessment must utilize a behavioral

assessment protocol that is generally accepted in the field as an effective and easily administered method of determining whether an animal is a suitable placement candidate. ACC will keep the Department apprised of all proposed changes and replacements of assessment methodology. The Department will promptly review such recommended changes and will either agree that such changes or new methodology can be adopted by ACC, or shall work with ACC to modify the methodology or find an alternative methodology acceptable to ACC and the Department. No animal should be placed for adoption, if such animal has been assessed by ACC, or by the Department, and the result of such assessment is a recommendation that such animal should not be made available for adoption. In certain exceptional cases involving exotic or otherwise prohibited animals, and with the approval of the Department in each such case, ACC may permit a sanctuary or other similar facility to adopt such an animal.

2.3.2 In accordance with applicable New York City Health Code provisions, and subject to such exceptions as the Department may grant, ACC will require each person adopting or redeeming an unlicensed dog to complete a license application and pay all required dog licensing fees, unless the person adopting or redeeming a dog provides a written statement to be retained on file by ACC (in hard copy or electronic form) that the dog to be adopted or returned to the owner will be harbored outside of New York City, and such statement will be verified by ACC at the time of the adoption, all in accordance with applicable law. Such applications and payment of fees will be completed by the person adopting or redeeming a dog prior to completing the adoption or redemption process and leaving the shelter with the animal. ACC will submit the completed applications and fees as specified by the Department on a schedule specified by the Department. ACC must also submit proof and appropriate documentation, including but not limited to spay/neuter certificate, as required by the Department for those license applications which ACC sold using the Dog Licensing On-Line System. ACC will report the number of such licensing exceptions to the Department monthly with the monthly report required pursuant to Section VI.C.1 of the body of this Agreement. Application forms, receipt books and voter registration forms will be provided by the Department. In adoption paperwork signed on behalf of such Animal Rescue Groups, ACC will advise all Animal Rescue Groups in writing to require that the persons adopting dogs through the Animal Rescue Group's efforts are required to purchase licenses for such dogs that will be harbored in New York City after adoption.

2.3.3 ACC will operate adoption programs, as follows:

- at its Manhattan Full Service Shelter seven (7) days a week for a minimum of seven (7) hours each day from 12:00 p.m. through 7 p.m., or for such other time frame as ACC determines is appropriate and which is approved in advance by

the Department;

- at all other Full Service Shelters seven (7) days a week for a minimum of six (6) hours each day during the hours that would allow for maximum exposure and availability of adoptable animals to the public and which is approved in advance by the Department;

- 2.4 For all dogs and cats that are returned to owners or adopted, ACC will administer rabies immunizations, issue rabies vaccination certificates, and collect all applicable licensing fees on behalf of the Department in accordance with the New York City Health Code. In accordance with Department directives, ACC will also implant microchips in all dogs, cats, rabbits and certain other animals as specified by the Department. ACC will record all microchip numbers and corresponding owner information in their database and for Department's review. ACC will provide, spay/neuter services in accordance with the New York City Spay/Neuter Law and NYC Health Code 161.23. ACC will develop safe and effective anesthetic protocols for spay and neuter, including pre- and post-operatively, and means for visually identifying sterilized animals. All animals released from the shelter by Adoption (as such term is defined in the Body of this Agreement) or returned to owners must be sterilized, unless such animal is exempt from sterilization pursuant to §17-804 of the Administrative Code of the City of New York, or other applicable law, rule or implementing regulation that pre-empts or otherwise modifies §17-804 of the Administrative Code of the City of New York. For all temporary waivers issued, ACC will implement a process for verifying deferred spaying or neutering, as applicable, and will provide such documentation as may be required by the Department.
- 2.5 ACC will have the professional capability to humanely euthanize animals, including the use of sodium pentobarbital injection, and to provide pre-euthanasia drugs when necessary. All staff handling and administering controlled drugs (defined as drugs or medications whose general availability is restricted and are federally regulated under the Controlled Substance Act and applicable New York State law, and implementing regulations) must be certified and registered pursuant to New York State rules and regulations to perform euthanasia. Humane euthanasia will only be administered by proficient and certified euthanasia technicians and New York State licensed veterinary technicians or veterinarians, as allowed by law. ACC will make every reasonable effort to place animals for adoption or will offer animals to Animal Rescue Groups for adoption and will euthanize animals in accordance with policies and procedures contained in its Policies and Procedures Manual, as approved by the Department. ACC will create and develop a list of criteria and a plan for identifying and assessing animals to expedite proper animal dispositions based on, but not limited to, factors such as health and behavior, and make such list and plan available for review by the Department upon

request by the Department, and such plan shall be included in the Policies and Procedures Manual to be developed, implemented and maintained as provided hereunder.

- 2.6 ACC will have the professional capability to, and will prepare specimens from all animals suspected of rabies or other zoonotic diseases for submission to either the New York State Department of Health Wadsworth Laboratories or the New York City Bureau of Laboratories for examination as required by the New York State Sanitary Code, New York City Health Code, and established guidelines and procedures of the State and City Departments of Health. Processing and taking of specimens for rabies testing will include appropriate infection control, disinfection of all instruments and contaminated surfaces as a result of preparing the animal specimen for rabies examination, and proper disposal of hazardous, infectious, and medical waste.
- 2.7 ACC will coordinate all intake, management and disposition of animals by means of ACC's computer tracking system, which will be subject to approval by the Department. ACC will procure and maintain all appropriate licenses and will be responsible for maintenance of the computer system. Within two (2) months of registration of this Agreement, ACC must submit to the Department for review and approval, a plan for the Department to have "read-only" access to the computer system. The plan will include, but not be limited to a description of the necessary hardware, software, training and the data fields that will be accessible to the Department and a timeline for implementation of the plan.

2.7.1 Computer Access

At the Department's expense for any required hardware and hook-up, and subject to all IT requirements that the Department may impose, ACC will provide the Department with online access to electronic information required pursuant to Article 11 of the New York City Health Code, including, but not limited to, rabies exposures and bite incidents. Should the Department request a search regarding a possible bite or dangerous animal investigation, ACC will respond within 24 hours unless specified a priority by the Department in which case ACC will respond by the time specified by the Department.

2.7.2 Record Keeping

ACC will develop, implement and maintain a record keeping system to ensure identification of animals, location within shelter system, whether animal is candidate for adoption, and which will encompass, at a minimum, the following reports: recording the receipt and disposition of all animals by type, elapsed time at the shelter for each animal, return to owner or other placement, a clear description of animal's health status, medical records that meet best practices

in veterinary medicine, and number of animals captured or seized and reasons for such actions. If ACC sends animals to other veterinary facilities for treatment or surgery, ACC will request medical records for such animals and when received will retain such records as a part of such ACC medical records and provide same to owners upon request in accordance with the New York State Education Law, as applicable. ACC will prepare periodic reports on the forgoing requirements in this subsection 2.7.2, and will include such other statistics and operating information in such reports as specified by the Department. Attention shall be focused on the security, including, without limitation, cybersecurity, of any collection and use of identifiable personal information gathered or used, and ACC shall collaborate with, and institute commercially reasonable suggestions of the Department's Chief Privacy Officer and DOITT security recommendations with regard thereto. Such security measures shall be included in ACC's Policy and Procedure Manual.

- 2.8 ACC will provide and maintain a lost and found program for animals to help reunite lost pets with their owners. ACC will maintain a 24 hour web-site with a link to an on-line database of lost animals. ACC will promptly make efforts to reunite owners with lost pets entering the shelters. However, this program is not intended to replace the owners' responsibility to actively search for lost pets.
- 2.9 ACC will hold on request or order of the Department or the Police Department of the City, any biting animal for rabies observation or any animal suspected by the Department of being vicious or a threat to the public health until a Departmental decision, pursuant to applicable law, is made regarding the disposition of that animal. ACC will notify the Department as soon as is practicable, and not later than within one (1) day, when ACC has knowledge that an animal brought into the shelter has either bitten or has exposed a person or another animal, whether or not the bites were inflicted while the animal was in ACC custody; or has sustained bite wounds believed to have been inflicted by another animal; or when the animal is one whose possession is prohibited by the NYC Health Code. ACC will also include all information that is available to ACC concerning the rabies exposure and the bite in accordance with Article 11 of New York City Health Code.
- 2.10 ACC may conduct education and community outreach concerning animal population control, proper pet care, animal behavioral or training issues and public health issues related thereto. ACC may enlist volunteers to provide such outreach services.
- 2.11 ACC will maintain, and may expand and refine, its customer service quality assurance program in cooperation with the Department, and will monitor customer satisfaction with services provided by Animal Care and Control and the quality of service delivery under this contract.

- 2.12 Standards for safeguarding and record keeping and all other requirements applicable to controlled substances must be adhered to as required by applicable Federal, State and City laws. Access to controlled substances will be limited to designated employees only, as required by applicable law and implementing regulations. Refrigerators and cabinets containing controlled substances will be locked. Records regarding controlled substances will indicate the date, name of the employee, name and lot number of the controlled substance, the amount used, purpose of use and the identification number of the animal treated.
- 2.13 ACC will maintain an inventory of all drugs and vaccines used in ACC facilities operated under this Agreement and will monitor usage rates and expiration dates used for each shelter, including, without limitation, controlled substances, which shall be controlled and monitored in compliance with applicable laws and implementing regulations. The Department will be granted access to these records upon request. Secure and storage and proper storage temperature range will be maintained for all drugs and vaccines in accordance with the manufacturer's recommendations and applicable laws, rules and regulations. All drugs that have expired will be disposed of in accordance with medically sound disposal practices that comply with applicable laws, rules and regulations.
- 2.14 Absent unusually dangerous circumstances ACC will assist the New York City Police Department ("NYPD") in dangerous dog sweeps; and the removal of bullets, when possible and when surgical resources are available, from animals shot by the Police and brought to the shelters; and will act as the holding agent, pursuant to the New York City Administrative Code Section 14-140, of those animals seized by the Police Department. The Department shall work with NYPD to expedite the release of animals so held by ACC, and ACC must expedite such release.

3. Animal Admissions Facilities Services

- 3.1 Until replaced by Full-Service Shelters, ACC will operate and maintain animal admissions facilities to be provided by the Department in the boroughs of the Bronx and Queens, will establish appropriate fee schedules for accepting animals other than dangerous, lost, stray, abandoned, or homeless animals, and will care for such animals in conformity with all applicable laws. All animals accepted at the Bronx and Queens admissions facilities will be transferred by ACC by the end of the workday to Full-Service Shelters, or shall be transferred in accordance with the underlying city Lease provisions applicable to such Admission facilities, as applicable.
- 3.2 Admissions facilities will be operated at the following sites, or such other suitable sites as may be designated by the Department:

Queens Animal Admissions Facility	92-29 Queens Blvd. Rego Park, NY 11374
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Bronx Animal Admissions Facility	464 East Fordham Road Bronx, NY 10458
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- 3.3 Animals temporarily held at the animal admissions facility of ACC will be cared for in a humane and appropriate manner in accordance with applicable law.
4. Commissioner's Orders. If the Commissioner of the Department issues Orders with respect to an animal or animals, ACC, as the holding agent, pursuant to the New York City Administrative Code Section 14-140, of those animals seized will implement any actions delegated to ACC by the Department for the implementation of such orders.
 5. Temporary/Emergency Shelters. The Department may require ACC to provide temporary animal shelters off-site (hereinafter referred to as "Annex Shelters") in the event that, in the judgment of the Department, certain animals must be quarantined to protect the health and safety of the other shelter animals or humans, or if an emergency exists that displaces large numbers of City residents from their homes and such displaced persons cannot keep their pets, and if required, ACC will, upon request by the Department, provide temporary kennel services for such animals for as long as a state of emergency requiring such temporary shelters exist. Payment for the Annex Shelters and temporary shelters costs in reasonable amounts will be added to the contract budget on an annual basis for the estimated duration of the quarantine, or emergency need, based on an emergency procurement that amends this Agreement to increase the funding hereunder for purposes of providing such emergency or quarantine services.
 6. Within the first six months after the commencement of this Agreement, ACC will develop a procedures and policy manual, which comprehensively sets forth its protocols and procedures to be followed in the performance of the services on its part to be performed pursuant to this Agreement, and its financial policies and procedures. After such policies and procedures manual is completed and has been approved by the Department, ACC will implement, maintain, and amend such approved Policies and Procedures Manual as necessary in response to Departmental concerns raised in writing by the Department. As part of such implementation, ACC will establish a quality assurance and quality control program in a manner acceptable to the Department.
 7. Prior to permitting any third parties to perform services required on the part of ACC to be performed hereunder, whether performed on a donation, fee, or subcontracting basis, and in addition to its obligations pursuant to Article 3 of Appendix A, ACC shall first obtain programmatic permission from the Department to outsource the services on its part to be

performed under this Agreement, and shall report all such services performed by persons or entities not a party to this Agreement, the dates and times and services so outsourced as part of its Monthly Report to be submitted pursuant to Article VI, subsection 1 of the body of this Agreement. This Section 7 shall not apply to referrals of animals on a medical emergency basis, or for referrals where specialized training or equipment that ACC does not possess, are required for treatment of the animal or for specialized diagnostics.

Exhibit B: Budget

ACC FY19 Budget for 34 Year Contract

Annex B Category	Type	Titles	# of Positions	Annual	Budget for 9/1/2018 to 6/30/2019 (10 Months)
Administration	PS	AP and Purchasing Coordinator	1	\$38,230	\$31,859
		Compensation and Benefits Coordinator	1	\$40,000	\$33,333
		Executive Assistant/HR	1	\$64,576	\$53,813
		Finance Director	1	\$106,895	\$89,079
		Human Resources Manager	1	\$52,000	\$43,333
		IT Support Analyst	1	\$31,866	\$26,572
		Marketing and Communications Associate	1	\$50,000	\$41,667
		President & Chief Executive Officer	1	\$189,625	\$158,021
		Senior IT Supervisor	1	\$50,700	\$42,250
		Senior Network Analyst	1	\$36,254	\$30,212
		Sr. Director, Chief Information Officer	1	\$93,200	\$77,667
PS Total				\$753,367	\$627,806
OTPS		Consulting - Fiscal		\$264,000	\$220,000
		Total Rent		\$260,389	\$216,991
		Internet Expense		\$49,000	\$40,833
		Liability, Property, & Other Insurance		\$120,310	\$100,268
		Office Supplies		\$18,000	\$15,000
		Other		\$91,000	\$75,833
		Payroll Processing		\$61,520	\$51,267
		Postage		\$5,000	\$4,167
		Professional Fees - Auditing		\$32,000	\$26,667
		Professional Fees - Consulting		\$5,000	\$4,167
		Security Services		\$58,643	\$49,036
		Telephone - Cell		\$52,000	\$43,333
		Telephone - Office		\$40,000	\$33,333
		Utilities - electricity, water		\$15,000	\$12,500
OTPS Total				\$1,072,062	\$898,386
Administration Total				\$1,825,429	\$1,521,191
Administration - New	OTPS	Bank Charges		\$0	\$0
		Client Transportation		\$0	\$0
		Printing		\$0	\$0
		Real Estate Tax		\$0	\$0
		Recruitment and Advertising		\$0	\$0
		Safety and Health		\$0	\$0
		Staff Training		\$0	\$0
		Staff Transportation		\$0	\$0
OTPS Total				\$0	\$0
Administration - New Total	PS	Admissions Counselor	11	\$344,286	\$286,505
		Admissions Supervisor	1	\$39,000	\$32,500
		Manager, Admissions/SP Program	1	\$45,350	\$37,792
		Special Intakes Coordinator	2	\$65,811	\$54,843
PS Total				\$494,447	\$412,039
Admissions Total				\$494,447	\$412,039
Field Operation and Call Center	PS	Animal Care Transporter	2	\$56,169	\$46,800
		Animal Control Officer	9	\$257,537	\$214,614
		Animal Cruelty Field Supervisor	1	\$42,800	\$35,750
		Dispatch Supervisor	1	\$35,000	\$29,167
		Field Dispatcher	4	\$107,757	\$89,798
		Field Manager	1	\$66,628	\$55,521
		Field Supervisor	1	\$46,125	\$38,438
PS Total				\$612,103	\$510,086
OTPS		Vehicle Insurance		\$269,514	\$224,595
		Vehicle Operations and Maintenance		\$130,850	\$109,042
OTPS Total				\$400,364	\$333,637
Field Operation and Call Center Total				\$1,012,467	\$843,723
Medical	PS	Animal Care Technician	1	\$29,848	\$24,873
		Foster Medical Coordinator	1	\$62,000	\$43,333

Exhibit B: Budget

ACC FY19 Budget for 34 Year Contract

Annex B Category	Type	Titles	# of Positions	Annual	Budget for 9/1/2018 to 6/30/2019 (10 Months)
		Head Veterinary Technician	1	\$54,080	\$45,067
		Licensed Veterinary Technician	17	\$709,134	\$590,945
		Medical Clerk	2	\$78,894	\$65,745
		Senior Manager, Veterinary Operations	1	\$75,000	\$62,500
		Senior Veterinary Operations Administrator	1	\$59,450	\$49,542
		Sr. Director, Veterinary Medicine	1	\$130,000	\$108,333
		Veterinarian	7	\$558,365	\$465,304
		Veterinary Administrative Assistant	2	\$56,160	\$46,800
		Veterinary Assistant	18	\$539,266	\$449,369
		Veterinary Team Manager	2	\$125,000	\$104,167
	PS Total			\$2,467,198	\$2,056,998
	O.T.P.S	Other		\$133,016	\$110,847
		Waste & Recycling Removal		\$37,630	\$31,358
		Per Diem Vet Services		\$100,000	\$83,333
	OTPS Total			\$270,646	\$225,538
Medical Total				\$2,737,844	\$2,281,536
Placement	PS	Adoption Counselor	10	\$286,023	\$238,352
		Adoption Outreach Coordinator	2	\$74,000	\$61,667
		Behavior & Enrichment Manager	1	\$61,500	\$51,250
		Behavior & Enrichment Supervisor	2	\$87,125	\$72,604
		Behavior Program Coordinator	1	\$35,000	\$29,167
		Canine Behavior Assessor	3	\$102,336	\$85,280
		Canine Enrichment Facilitator	4	\$111,259	\$92,716
		Feline Behavior Assessor	2	\$58,136	\$48,447
		Feline Behavior Supervisor	2	\$40,000	\$33,333
		Feline Enrichment Facilitator	2	\$54,080	\$45,067
		Foster Coordinator	2	\$72,385	\$60,321
		Foster Liaison	1	\$30,742	\$25,619
		Foster Manager	1	\$50,700	\$42,260
		New Hope Coordinator	2	\$71,000	\$59,167
		New Hope Liaison	6	\$197,248	\$164,372
		Off-site Adoption Counselor	2	\$60,736	\$50,613
		Placement Coordinator	2	\$76,875	\$64,063
		Placement Liaison	1	\$29,994	\$24,996
		Placement Supervisor	2	\$85,800	\$71,500
		Playgroup Coordinator	1	\$35,437	\$29,531
		Senior Manager, Placement	1	\$65,000	\$54,167
		Sr. Director, Strategic Operations	1	\$93,200	\$77,667
		Volunteer Coordinator	2	\$71,750	\$59,792
		Volunteer Manager	1	\$50,700	\$42,256
		Volunteer Program Assistant	1	\$27,040	\$22,533
	PS Total			\$1,928,065	\$1,606,721
Placement Total				\$1,928,065	\$1,606,721
Shelters	PS	Animal Care Specialist	45	\$1,146,980	\$965,825
		Animal Care Supervisor	3	\$128,100	\$106,750
		Care Center & Community Relationship Manager	1	\$58,000	\$48,333
		Care Center Assistant Manager	2	\$101,400	\$84,500
		Client Care Representative	10	\$253,500	\$211,250
		Custodian	2	\$54,080	\$45,067
		Enhanced Reunification Coordinator	1	\$23,000	\$19,167
		Lead Animal Care Specialist	8	\$227,045	\$189,204
		Lead Client Care Representative	1	\$28,276	\$23,563
		Lost and Found Liaison	1	\$30,742	\$25,619
		Population Coordinator	2	\$77,900	\$64,917
		Quality Assurance Analyst	1	\$60,700	\$42,259
		Senior Manager, Menhatten Care Center	1	\$65,000	\$54,167
		Shelter Expansion Coordinator	1	\$93,200	\$77,500
		Sr. Director, Organizational Development	1	\$93,200	\$77,667
		Sr. Vice President & Chief Operating Officer	1	\$135,000	\$112,500

Exhibit B: Budget

ACC FY19 Budget for 34 Year Contract

Annex B Category	Type	Titles	# of Positions	Annual	Budget for 9/1/2018 to 6/30/2019 (10 Months)
		Training Coordinator	2	\$76,752	\$63,960
	PS Total			\$2,642,685	\$2,202,237
	OTPS	Facilities Repairs & Maintenance		\$19,000	\$15,833
		Other		\$233,295	\$194,413
	OTPS Total			\$252,295	\$210,246
Shelters Total				\$2,894,980	\$2,412,483
Overtime				\$275,000	\$142,993
Fringe				\$2,340,845	\$1,942,176
FY2019 COLA				\$1,080,083	\$900,076
DOH Total Allocated				\$14,689,270	\$12,062,934

ACC 34-Year Contract Maximum Reimbursable Amount (MRA)

Year	Fiscal Year	MRA
1	FY19	\$14,589,270
2	FY20	\$15,875,022
3	FY21	\$15,625,778
4	FY22	\$23,993,122
5	FY23	\$36,153,779
6	FY24	\$36,545,912
7	FY25	\$37,796,495
8	FY26	\$37,837,870
9	FY27	\$38,757,566
10	FY28	\$39,441,383
11	FY29	\$39,874,329
12	FY30	\$41,255,074
13	FY31	\$41,300,756
14	FY32	\$42,316,175
15	FY33	\$43,071,163
16	FY34	\$43,549,171
17	FY35	\$45,073,625
18	FY36	\$45,124,061
19	FY37	\$46,245,166
20	FY38	\$47,078,734
21	FY39	\$47,606,494
22	FY40	\$49,289,613
23	FY41	\$49,345,299
24	FY42	\$50,583,089
25	FY43	\$51,503,416
26	FY44	\$52,086,105
27	FY45	\$53,944,405
28	FY46	\$54,005,887
29	FY47	\$55,372,507
30	FY48	\$56,388,623
31	FY49	\$57,031,959
32	FY50	\$59,083,672
33	FY51	\$59,560,536
34	FY52	\$60,660,412
*Total MRA for 34 year Agreement		\$1,487,966,471

*MRA includes budget allocation for the Queens Animal Shelter development debt service payments, which will cover expenses for site acquisition, construction, renovation, and outfitting. This line item budget will be established in the out lining years of the agreement on an annual basis when such payments are required to be made.

EXHIBIT C
QUEENS FULL-SERVICE SHELTER
SITE DEVELOPMENT BY ACC

A. PURPOSE

1. The purpose of this Exhibit C to the Agreement is to set forth the terms and conditions pursuant to which ACC will acquire a site located at 151 Woodward Avenue & 1902 Flushing Avenue, Ridgewood, New York 11385 (Block 3376, Lots #1 and 7) (or in the alternative a yet to be determined location in the Borough of Queens). Subsequent to acquiring that site, ACC will develop, construct and operate a Full Service Shelter on behalf of the City of New York (the "Queens Shelter"). The Queens Shelter will be located on or in a site (the "Queens Site") that was chosen by ACC and approved by the Department as to programmatic sufficiency.
2. The parties acknowledge and agree that ACC will purchase the Queens Site in fee simple absolute and such site must be approved by the Department as suitable for the location and operation of a Full Service Shelter. ACC shall improve the property, obtaining financing for such purchase and improvements, including both construction and permanent financing, from a financial institution or institutions acceptable to the City (separately, the "Lender" and collectively, the "Lender(s)"). The Department must also approve the rate of interest for all such financing.
3. The Department and the City recognize that ACC shall receive a Site acquisition down payment, as well as payments equal to the debt service for loans given for the purpose of acquisition, renovation, construction, and permanent financing for the new Queens Shelter acquisition and Queens Site improvements ("Debt Service Payments"), and that ACC shall enter into financing agreements with Lenders partially in reliance upon the undertakings by the City and Department contained in this Agreement. Accordingly, in the event this Agreement terminates for any reason whatsoever or for no reason, the Required Debt Service Payments for said expenses, shall continue to be paid by the Department over the original term of the Agreement, or as a lump sum payment as part of any approved budget for the development and/or initial outfitting of the Queens Shelter, whether such Queens Shelter is operated by ACC, the City, or designee of the City. If the Agreement between ACC and DOHMH of which this Exhibit C is a part is terminated, then the City and/or Department shall continue to pay the Debt Service Payments for the

construction or permanent financing directly to the Lender, or the City may pay the lender the balance due and owing for prepayment of outstanding loan balances. ACC shall convey ownership of the Queens Site, and the partially or wholly completed Queens Shelter, to the City or to its designee, if this Agreement, of which this Exhibit C is a part, is terminated. The Department's obligation to make Debt Service Payments, as contained in this Exhibit C, shall survive the termination of this Agreement. Any mortgage(s) secured by the Queens site shall be assumed the City or its designee upon transfer of ownership, subject to the mortgagee's approval. During the interim following such termination, if any, until such transfer of ownership and financing can be arranged, ACC will continue to own the Site, and any and all improvements thereon, and, ACC shall lease the Site, as improved, to the City or its designee, in consideration for the City's continued Debt Service Payments to be paid in lieu of rents and will cooperate in all manner with such interim lease and transfer of ownership and mortgage(s), in accordance with section L.1 below promptly executing and delivering all documents upon demand that may be reasonable or necessary to effectuate the intent of the foregoing provisions.

4. The property improvements on the site for the Queens Site will be the responsibility of ACC, which will retain the services of a project team, including, without limitation, a project manager and design consultant(s) for the design of the Queens Shelter, and other consultants and subcontractors, through a solicitation process acceptable to the Department to either: 1) renovate existing improvements on the site, or 2) to carry out new construction and/or renovation. In any event, the site for the Queens Shelter and the underlying terms and conditions of the sale and purchase contract must be pre-approved by the Department before ACC enters into a binding agreement for same, and one of the factors that the Department will use in approving same, will be the best value under current market conditions in the Borough of Queens for financing commitments within the funds allocated for this project in the Budget, annexed to this Agreement as Exhibit B. The Department will fund the purchase of the site, approved renovations construction and the initial outfitting costs for the Queens Shelter by making Debt Service Payments directly to the Lender(s) in amounts sufficient to provide such funding either on a Quarterly advance basis, or, if paid directly to the Lender(s) on an as due and owing basis, based on required loan service payment requirements pursuant to the loan documents, including both principal amortization as approved for the length of the loan and the interest payable thereon as approved by the Department. Said monthly Debt Service Payments shall be reconciled on a Quarterly basis by ACC with actual Budget costs as provided in Article III of the body of this Agreement, for the purpose of advancing funds not only to operate and maintain

the new Queens Shelter, but also, for: 1) the purchase; and 2) new construction and/or renovation of the purchased site, by making certain funds available to ACC for the purchase of the site for the Queens Shelter and the improvements to such site and to pay the down payment, Construction financing Lender and the permanent Lender and as more particularly described below.

5. ACC will actively seek appropriate financing, as approved by the Department as to source and terms, for the construction of the Queens Shelter from a construction financing source and from a permanent financing source. Other funding sources may include sources which comply with all financing obligations and have no conflict of interest with the governmental functions to be performed by ACC in the Queens Shelter, as such conflicts of interest are determined by the Department. Such additional funding sources to leverage City funding of this project, subject to approval by the Department, may include, without limitation, subordinate construction loans from other lenders, and other sources such as, by way of example only: New Markets Tax Credit Program pursuant to 26 U.S. Code § 45D and Brownfield Tax Credits, if applicable, and other ACC grant applications, donations, and revenue producing activities, if such revenue producing activities are approved by the Department, and if such revenue producing activities are not prohibited by the underlying construction and permanent financing restrictions.

B. PRE-CONSTRUCTION PLANNING AND DESIGN AND CONSTRUCTION

ACC, itself, and with regard to professional services, acting through its consultants and contractors, as approved by the Department or Lender, as applicable, shall manage all aspects of the purchase and improvements necessary for renovation and/or construction of the Queens Shelter in consultation with the Department. They will include the following phases:

1. Site Search and Approval of the Site by the Department;
2. Purchase, Construction and Permanent Financing for the Queens Site and its improvements to be arranged by ACC, subject to approval by the Department;
3. Contract of Sale and Purchase and approval of terms by the Department;
4. Closing on the purchase of the Queens Site;
5. Design Schematic Drawings and Plans;
6. Final Plans;
7. Construction;

8. Final Approvals; and
9. Construction Documents.

The above referenced phases shall be completed in a mutually agreed upon, but yet to be determined timely manner. ACC shall submit to the Department, in triplicate, true and complete copies of Schematic Drawings and Plans and Construction Documents, as soon as such documents are completed.

C. FINANCING

ACC may commence construction of the improvements to be made to the Queens Site, only after adequate financing is in place and approved as to the source, terms and conditions by the Department. ACC, in its sole discretion, shall be permitted to sell unused airspace rights above the Queens Site, provided that use of the proceeds from such sale are restricted to animal care and control purposes, or such other purposes as agreed to by the Department consistent with the mission of the Department. As used in this Section C, "proceeds" shall mean revenue from the sale of such airspace less any costs incurred by ACC associated with the transaction, including, without limitation, legal fees, consultant fees, broker fees, and taxes.

D. PRE-CONSTRUCTION

1. Timetable for Schematic Drawings

Subsequent to entering into a contract to purchase the Queens Site that has been approved by the Department, ACC shall prepare Schematic Drawings for the renovation of an existing building, if any is to be renovated, or new construction on the site for the Queens Shelter, or a combination thereof. The drawings shall contain, at minimum, information that is required by best practices in the construction field for the purpose of assuring the Department that the Queens Shelter will be suitable for the intended use. Upon completion of the Schematic Drawings, ACC will submit a copy of the schematic drawings to the Department, together with an estimate of the cost for the renovation of the Building or new construction, or combination thereof, and if the cost exceeds the amount budgeted therefor, ACC will actively work to fit the construction program within the budgeted amounts therefor, and shall report to the Department all steps taken and to be taken to so fit the budget to the available funds.

2. Timetable for Final Plans/Construction Documents

Following the completion of the final schematic drawings, which shall comply with all applicable Federal, State and local programmatic and building code requirements, and which are to be completed in accordance with the yet to be determined Timeline, ACC shall prepare the construction documents, which include the construction drawings (which include the final drawings) and specifications and construction schedule for the renovation and/or construction of the Queens Shelter (collectively, the "Construction Documents"). Upon completion of the Construction Documents, ACC shall submit a full copy of the Construction Documents to the Department. If and when such Construction Documents are modified in any respect, ACC shall submit a copy of such modified Construction Documents to the Department. ACC shall also submit the Final Plans with the Construction Documents, including in such submission, the final estimate of the cost for the renovation of the any existing building and new construction or combination thereof. All Construction Documents will be subject to modifications necessary or required to comply with Department of Buildings ("DOB") requirements as well as those of other codes and applicable governmental requirements. Upon notification that ACC must modify the Construction Documents to meet such requirements, ACC will advise the Department and will submit all revised Construction Documents to the Department in like manner as required for prior submissions.

3. Timeline Revisions and Response to Departmental Inquiries

- a. In accordance with the yet to be determined Timeline, ACC shall proceed sequentially to each phase and task set forth in the Timeline in accordance with such Timeline dates. ACC's designated construction contractor or architect shall respond in reasonable detail and with promptitude to all questions raised by the Department.
- b. For good cause shown by ACC, if there are no financing impediments thereto imposed by Lenders, the yet to be determined Timeline may be extended by the Department, after review and approval of ACC's request therefor. Each such request shall explain the need for such change in the Timeline and shall detail the reasons therefor. If ACC possesses information as to possible delays in this project, it will immediately advise the Department in writing.

E. CERTAIN QUEENS FULL-SERVICE SHELTER DESIGN REQUIREMENTS

1. ACC will include requirements in the Contract Documents to assure that upon completion and the issuance of a Certificate of Occupancy, the Queens Full-Service Shelter shall meet the program and physical requirements of all applicable Federal, State and local laws, regulations, codes and ordinances, including, but not limited to, zoning laws, building codes and the Americans with Disabilities Act, all to the extent applicable.
2. ACC shall obtain the approval of all regulatory agencies whose approval of the Building's design is required, including, but not limited to, the New York City Landmark Commission, if applicable, the New York City Department of Environmental Protection, the New York City Fire Department, and the New York City Department of Buildings. All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect of Record and shall be accompanied by all necessary applications, certificates, or permits of all Federal, State and local agencies having jurisdiction over the work.
3. During the design phase ACC shall conduct all site investigations, including but not limited to, land survey, soil borings, evaluation of sub-soil materials and gases and percolation tests. The results of all such tests shall be provided to the Department.

F. RENOVATION AND/OR CONSTRUCTION COSTS.

1. ACC shall submit to the Department a cost-effective, state-of-the-art full service animal shelter design that meets legal requirements and is designed with primary emphasis on the function of delivering Program Services. ACC shall also submit any documentation, as reasonably requested by the Department, substantiating the cost of renovation and/or construction. The parties estimate that the cost of renovation and/or construction, which costs shall include all development costs, shall not exceed the amount allocated therefor in the Budget (hereinafter referred to as the "Estimated Cost of Construction").
2. After the completion of the Construction Documents, the parties shall agree to a cost for the improvements to the site for the Queens Shelter (hereinafter referred as the "Guaranteed Construction Cost"). The Department anticipates that the Guaranteed Construction Cost shall be at or about the Estimated Cost of

Construction set forth in the Budget. If the parties cannot agree to a Guaranteed Construction Cost that is within the amounts allocated therefor, provided and on condition that ACC has available sources other than the amounts allocated therefor from sources other than the amounts budgeted for such purposes by the Department and/or shall direct its architect to adjust the Project's size, quality or budget in an amount and manner approved by the Department to keep all estimated construction costs to an amount within the total funding available therefor from all funding sources available on a timely basis to be able to pay costs when due and owing. ACC and the Department will work cooperatively through their respective architects to realize a cost savings equal to the portion of the Guaranteed Cost of Construction for which funding has not been allocated pursuant to this Agreement, if any, or ACC shall guarantee additional funding to pay the shortfall between the Guaranteed Construction Cost and the funding provided pursuant to its Agreement with the Department from funding that ACC can demonstrate to the satisfaction of the Department is guaranteed to be available to fund any estimated funding shortfall.

3. The parties expressly acknowledge that the Required Debt Service Payments were calculated in accordance with the Estimated Cost of Construction. The parties further acknowledge that the Estimated Cost of Construction is an estimate only and if the Guaranteed Construction Cost, as agreed to in paragraph (2) above, is less than or exceeds the Estimated Cost of Construction, the parties may modify this Agreement by decreasing the Required Debt Service Payments, subject to all required approvals, but that they cannot increase such amount without an amendment to this Agreement.
4. ACC agrees that, provided the Department does not recommend any change in the Construction Documents that would increase the costs after the Guaranteed Construction Cost is set, and there are no additional costs resulting from design changes necessitated by changes in Federal, State and local laws, rules, regulations or codes, ACC shall complete or cause to be completed all the work necessary to obtain all required governmental approvals to operate the Program on the Queens Site, as provided for herein, without payment in addition to the Guaranteed Construction Cost. The cost of construction is a guaranteed price for all the work required to complete the renovation and obtain all required governmental approvals. Therefore, ACC shall not delete any item of work called for on the Construction Documents or make any substitutions for materials or methods of construction, all as specified in the construction documents, without advising the Department of such change. Advising the Department of such changes shall not be required if the change is only substitution of materials with materials of equal or

better quality.

5. If the Department recommends a change in the Construction Documents after final approval or there are design changes necessitated by changes in Federal, State or local laws, rules, regulations or codes or there are unforeseen field conditions after the Guaranteed Construction Cost is agreed to, that will require an increase in Debt Service Payments, the parties may modify this Agreement to increase the Debt Service Payments, subject to all required approvals. If the increase in Debt Service Payments is not approved, ACC will make changes in the construction documents to adjust the scope of construction to enable the project to proceed within the original allocated cost.

G. APPROVALS

All approvals for the project required by law, implementing rules and regulations, including applicable Building Codes, must be obtained by ACC on a timely basis.

H. DELAYS

Within ten (10) business days of the commencement of any condition which may delay the completion of any task during the Pre-Construction phase of this Agreement and may delay the critical path of construction and/or the commencement date of ACC's operation of the Program at the Queens Site, ACC must notify the Department in writing of the effect of such condition on the progress of the work and state why and in what respects the condition is causing or may cause a delay in the completion of the Pre-Construction phase of this Agreement in accordance with the timeline provided therefor. If, and when appropriate, the time frames for the completion of the Pre-Construction phase of this Agreement may be extended with the Department's approval, which approval shall not be unreasonably withheld or denied.

I. INABILITY TO PROCEED

If ACC cannot proceed with the improvements for the site of the Queens Shelter due to cause or causes beyond ACC's reasonable control and such inability to proceed cannot be reasonably corrected by ACC, this portion of this Agreement contained in this Appendix C shall terminate without further liability to either party, except that the Department shall reimburse ACC for any approved pre-construction costs incurred prior to termination. ACC shall notify the Department within forty-eight (48) hours of ACC becoming aware of any cause or causes which will prevent ACC from proceeding

with the site improvements.

J. CONSTRUCTION

1. ACC, at its sole cost and expense, shall cause the Queens Site to be improved in accordance with the Construction Documents. Construction shall not commence until the Construction Documents are approved by all governmental agencies having jurisdiction over the site for the Queens Shelter and the proper permits issued (the receipt of all such approvals and permits shall hereinafter be referred to as the "Approval Date"). ACC shall make its best efforts to obtain all such approvals and permits in accordance with the Timeline, unless otherwise agreed to in writing by the Department for good cause shown by ACC, such as a delay in issuance of such approvals and permits attributable to delay on the part of the DOB. A representative of the Department, as designated by the Department shall be included as an attendee in the Construction kick-off meeting and all weekly and other meetings and site inspections thereafter to monitor the progress of the construction and shall be advised of the time and place of all such meetings in advance.
2. The construction of the Queens Shelter shall be prosecuted with all reasonable diligence and without interruption in accordance with the yet to be determined Timeline, as may be amended by request of ACC, if approved by the Department. ACC shall obtain a temporary certificate of occupancy in accordance with the yet to be determined Timeline (hereinafter referred to as the "Initial Completion Deadline"), as such date may be extended in accordance with the terms of this Section 2. ACC shall maintain the Temporary Certificate of Occupancy until ACC obtains the Permanent Certificate of Occupancy. ACC must fulfill and comply with all of the terms and conditions of the applicable loan documents. If the temporary certificate of occupancy has not been issued by the time set forth to obtain the temporary certificate of occupancy in the Timeline, (the "Completion Deadline"), ACC will have ten (10) business days from a request by the Department to provide evidence that a plan to obtain the temporary certificate of occupancy has commenced and such evidence must set forth an estimated date that it will be obtained. If ACC does not provide such a plan within ten (10) business days of request from the Department, the Department might seek to terminate this Agreement for reason of ACC's failure to obtain its temporary certificate of occupancy in the time set forth in the Timeline. In addition to any opportunity that the Department may extend to ACC to cure any default, the Department shall give Bank, its successors or assigns, reasonable time to cure any such default, which cure may include proposing a replacement contractor subject to Section 3.02 of Appendix A. The deadline for obtaining a temporary certificate of occupancy may be extended for unavoidable delays, including but not limited to, delays caused solely by the New York City Buildings Department, or delays that are approved by the Department, which approval shall not be unreasonably withheld or denied, if

the failure to obtain the temporary certificate of occupancy arises from any other cause beyond ACC's reasonable control and which failure cannot be reasonably corrected by ACC. For purposes of this Section 2, the term unavoidable delays shall mean any delays due to strikes, acts of God, governmental restrictions, unavailability of labor/materials, enemy action, civil commotion, fire, unavoidable casualty, or other causes beyond the control of ACC; provided, however, that the failure of ACC to fulfill the requirements to receive financing for the purchase of the property and renovations shall not be deemed a cause beyond the control of ACC.

3. ACC and its designated construction contractor, shall be responsible for all aspects of construction including, but not limited to, supervision of work, quality control, inspections and testing, safety, ensuring compliance with the completion schedule, maintaining daily job diaries and all logs, files and reports, cost accounting, temporary facilities and utilities, job meetings and maintaining minutes, preparation of as-built drawings, applying for all necessary building permits and files, and project close-out.
4. Within ten (10) business days of the commencement of any condition which may delay the completion of site improvements on the Queens Site. ACC must notify the Department in writing of the effect of such condition on the progress of the work and state why and in what respects, the condition is causing or may cause a delay in the completion of the project. If, and when appropriate, the Initial Completion Deadline may be extended with the Department's approval, which approval shall not be unreasonably withheld or denied.
5. ACC shall obtain the Department's prior written approval, which approval shall not be unreasonably withheld or denied, before making any substantial change(s) to the design of the Building that would require a change in Required Debt Service Payments. In the event the Department does not notify ACC within one (1) week of its receipt of ACC's request for approval of such changes to the design of the Building that the changes are acceptable, or if not acceptable, give the reasons, in writing, why the design changes are not acceptable, the design changes shall be deemed approved by the Department.
6. Within one hundred and fifty calendar (150) days following the Initial Completion Date, ACC shall furnish to the Department copies of all final certificates, licenses, consents and other approvals of the various governmental authorities having jurisdiction over the Queens Site. ACC shall also furnish to the Department copies of all "as built" drawings, construction warranties, shop drawings approved by ACC's architect and operation manuals.

7. If ACC does not obtain at least the temporary certificate of occupancy within three hundred and sixty five (365) calendar days following the Initial Completion Deadline as set forth in timeline approved by ACC, the Department, and the Lender(s), and after the temporary certificated of occupancy has been obtained, diligently pursue the final certificate of occupancy, ACC's time to perform may be extended by the Department, subject to the consent of the Permanent Lender, if such delay in performance arises from any cause beyond ACC's reasonable control, and ACC demonstrates to the satisfaction of the Permanent Lender and the Department that it is ready, willing and able to take corrective actions and diligently pursue the Certification of Occupancy for the Queens Shelter. The Department shall give the Permanent Lender ninety (90) calendar days prior written notice before it terminates any funding for ACC services, and afford the Permanent Lender, the right, in its sole discretion, to cure any such default within a reasonable time. "Permanent Lender" shall mean the entity providing the construction financing, its successors and/or assigns, until such time as an institutional lender) makes a permanent loan to ACC in satisfaction of the Construction Loan, at which time "Permanent Lender" shall mean the institution which funds such Permanent Loan, its successors and/or assigns, as their interest may appear.
8. During the construction phase of the project, ACC shall at all times afford representatives of the Department every reasonable and safe opportunity to observe the work done or being done. The Department shall have the right to make reasonable suggestions regarding the performance of the work and notify ACC of any work that is not in conformance with the Construction Documents. ACC shall cause its contractor to cure any such non-conforming work within ten calendar (10) days of notification by the Department that the work is not in conformance with the Construction Documents or if the non-conforming work cannot be cured by ACC's contractor within ten calendar (10) days ACC agrees to diligently work until the problem is cured. The Department will be timely informed of (in advance when meeting schedules are set or as soon thereafter as practicable) meetings and job inspection schedules, and may attend job meetings, inspections, and/or requisition meetings in its discretion. Any actions by the Department pursuant to this subsection 8 shall not relieve ACC of its obligation to perform the work in strict accordance with the terms of this Agreement.

K. PAYMENTS

1. During the start-up period and thereafter ACC shall be paid an amount to cover the debt service for the site purchase, construction and permanent financing as

allocated for that purpose in accordance with the Budget, a copy of which is attached hereto and made a part hereof Exhibit B, the Budget, subject to an adjustment by Budget Modification based on projected actuals, ACC shall submit to the Department such documentation as requested by the Department substantiating the expenditures set forth in the Budget and shall sign and deliver all assignments required or necessary to assign payments to its Lenders in the amount of the Required Debt Service payments.

2. The Department agrees to pay for the Required Debt Service Payments on the acquisition, construction financing and thereafter, for the permanent financing for improvements to the site of the Queens Site in accordance with the allocations therefor set forth in the Budget (Exhibit B), which amounts shall be applied to the payment of the Debt Service Payments as they become due and owing pursuant to Department approved loan documents, and the remaining operating costs will be paid in accordance with the Budget (Exhibit B). Each such Debt Service Payment shall be made by the Department, on behalf of ACC, directly to the designated Lender(s), as applicable, on a monthly basis after the receipt by the Department of the required assignment forms to such Lenders and an invoice requesting payment. The Department hereby agrees that pursuant to the foregoing designation, each applicable payment shall be sent to the Lender(s), as applicable, by wire (provided they, respectively, comply with current and future City requirements for payment by electronic fund transfer) or check, as directed by the Lender as to its payment. Required Payments shall commence in accordance with the lenders' requirements under the financing documents, as approved by the Department.
3. The parties acknowledge that the portion of the Budget that is for the operation of the Program is based on the budget submitted by ACC and approved by the Department to operate the Full Service Shelters and Admissions Facilities. ACC and the Department shall review, annually on a City Fiscal Year allocation basis; such payments paid to ACC against the costs budgeted therefor and ACC's actual costs for providing services under this Agreement, to determine the appropriateness of the advance payments for operational expenses. The Department may increase or decrease such payments based upon such analysis, subject to all necessary approvals. It shall be within the Department's sole discretion as to whether to increase the payments for services. If the City changes the approved budget during the term of this Agreement, the Department may change the advance amounts to be paid ACC each Month; provided that any such change has been agreed to in writing by the parties and all necessary approvals are received by the Department. Notwithstanding the above, there shall be no reduction in the amount of the Required Debt Service Payments.

4. No expenditures shall be made by ACC with funds provided under this Agreement except those properly incurred pursuant to and during the performance period of this Agreement.
5. If legal requirements in respect to some areas of the Program services to be provided by ACC hereunder are changed from current legal requirements so that the cost of providing them as set forth in the Budget increases by more than a *de minimus* amount, the Department may reallocate moneys in the Program Budget for other services or costs to the affected areas, with a resulting decrease in such other services and consequential changes in the Program Services. Notwithstanding the above, there shall be no reduction or reallocation of Required Debt Service Payments for either the Construction phase construction payments or the Permanent Financing Debt Service Payments.
6. The total contract amount allocated to the purchase, construction and initial outfitting for the Queens Full-Service Shelter shall not exceed the amount therefor in the Budget (Exhibit B); provided, however that in no event shall the Required Debt Service Payments be reduced, reallocated or modified.

L. TERMINATION PAYMENTS

1. In the event the Department and/or City terminates this Agreement in whole or in part pursuant to any provision herein, for any reason or for no reason, prior to the expiration of the term of this agreement, as contemplated, then, at the election of the Department and/or City, and at the option of the Department, after the interim lease period contemplated by section A. 3 above, and upon the Department's demand, ACC shall transfer the ownership of the Queens Shelter, as improved to date of transfer, to the City of New York, or to the operator of the Queens Full-Service Shelter as designated by the Department, for the nominal amount of \$1.00 and the reasonable expenses incurred by ACC to transfer such ownership. In such event, ACC shall fully cooperate in the smooth transition to the new operator of the Queens Shelter, and the sum of up to \$5,000 in reasonable expenses shall be paid to ACC to cover its professional fees for the preparation and delivery of such documentation as may be required or necessary in the sole determination of the Department to effectuate such transfer.
2. If there is purchase, construction and/or permanent financing for the improvements to the site, and/or initial outfitting of such site, of the new Queens Full-Service Shelter, the Department and the City recognize that ACC shall receive such

financing in reliance upon the undertaking by the City and Department contained in this Agreement. Accordingly, in the event this Agreement terminates for any reason whatsoever or no reason, or if ACC is in default under this Agreement, the Required Debt Service Payments shall continue to be paid over the original term of this Agreement directly to the Lender in accordance with the applicable financing terms until the mortgage(s) is satisfied or assumed by the City or its designee. ACC will cooperate in the transfer of such operations to a successor service provider. Required Debt Service Payments shall be paid by the City and/or Department directly to the Lender. This subsection shall survive the termination of this Agreement.

M. CHANGE OF USE

The parties acknowledge that the needs of the City and the purposes, for which the Building shall be used, may change over the term of this Agreement. In the event the Department determines that the type of program(s) being operated at the Queens Shelter should be changed, the parties may amend this Agreement to reflect the change in program(s), provided, however, that all Required Debt Service Payments shall continue to be made in accordance with the terms of this Agreement. Any such amendment(s) shall be subject to all required approvals and ACC's ability to provide the new services.

N. NOTICE TO LENDER(S)

After financing is in place ACC shall notify the Department with regard to notices that may be required to be sent to the Lender(s) by the Department, and after receipt of such notification, the Department shall also send copies of such required notices to the Lender at the contact address or email or facsimile that shall be provided by ACC for that purpose in the manner set forth in Section 14.04 of Exhibit A.

O. LIMITATION ON MODIFICATION

Modifications, changes or amendments to any provisions in this Agreement affecting payments to the Lender(s) or to any other rights or entitlements of the Lender, may not be made without the consent of the affected Lender(s).

P. FUTURE USE OF QUEENS SHELTER

ACC agrees and acknowledges that if it purchases real property for the site for the Queens Shelter, ACC shall incorporate the restrictive covenant contained in Schedule I to this Exhibit C into its deed for the Queens Shelter, which restrictive covenant is

intended to restrict the deed and thereby cause the ownership of the Queens Full-Service Shelter to revert to the City, if, for any reason, the Queens Shelter is no longer to be used primarily as an animal care and control shelter for the benefit of the City, acting by and through the Department. Such Schedule I is hereby made a part of this Exhibit C and the Agreement to which this Exhibit C is attached.

SCHEDULE I

THE CITY OF NEW YORK - RESTRICTIVE COVENANTS

[To be attached to a deed as a "SCHEDULE"]

1. (a) **"Animal Care and Control Use"** means improvement of the Site to render it suitable for use for the purpose of improving the Site and using the Site, as improved, for the purpose of providing animal surveillance, seizure, control, and care shelter services to the local government, namely, The City of New York, acting by and through its Department of Health and Mental Hygiene, or the successor in interest to such entity;
 - (b) **"Grantee"** means the grantee herein of the Lands and any successor in title to the Lands;
 - (c) **"Subdivided"** means a division of the Lands by means of a plan of subdivision, plan of survey, agreement, deed or any instrument, including a caveat, transferring or creating an estate of or interest in part of the Lands;
 - (d) **"Site"** means the land and its improvements as described in Schedule "[TBA]" annexed hereto, and
 - (e) **"City of New York"** means the municipal Corporation that is The City of New York, acting by and through its Department of Health and Mental Hygiene or any successor agency; and any other successor municipal corporation, or governmental entity to which the City of New York, acting through its Department of Health and Mental Hygiene, or successor thereof, assigns its rights or privileges pursuant to these restrictive covenants.
2. The Site may be used for Animal Care and Control Use only.
 3. Notwithstanding the restrictive nature of the foregoing, the Grantee agrees that the following restrictions shall run with the land and shall be binding upon the Grantee:
 - (a) No building or any other erected structure or improvements of any type whatsoever shall be constructed or placed on the underlying real property that are for any use other than Animal Care and Control use;
 - (b) The Site may not be used for any other purpose whatsoever other than Animal Care and Control;
 - (c) The Site shall not be Subdivided; and
 - (d) The Grantee acknowledges that use conformance to the Animal Care and Control Use is of paramount importance to the City of New York. In keeping with the importance of such use, no ancillary use shall be allowed without the written permission of the City of New York, acting through its Department of Health and Mental Hygiene.

THE GRANTEE HEREBY COVENANTS AND AGREES that, upon any and all subsequent sales of the Site, the Grantee, and future successor grantees of title, shall ensure that, prior to or at the time of the conveyance of the Site and any improvements thereon to them that may exist at the time of such conveyance, such successor in title shall sign a covenant acknowledging the restrictive covenants herein and agreeing to be bound by, for themselves and any future successor in title, the restrictive covenants as set out herein.

APPENDIX INS
INSURANCE AND INDEMNIFICATION REQUIREMENTS
FOR CONSTRUCTION OF FACILITY

I. INSURANCE

A. **Construction-Related Insurance.** The requirements in this Appendix INS supplement the insurance requirements in Article 7 of Appendix A and are intended to cover risks associated with the design and construction of the facility described in the Agreement (“Facility”). The coverages described in this Appendix INS are minimum requirements only, and Contractor may obtain or require insurance that exceeds these requirements. Contractor may seek a waiver of a requirement in this Appendix INS upon request to the Department.

B. Types of Insurance.

1. *Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance – Construction Contractor and Design Consultant.* Contractor shall ensure that any construction contractors providing construction services in relation to the Facility (“Construction Contractor”) and any architects and engineers providing professional services in relation to the Facility (“Design Consultant”) to maintain Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance in accordance with the laws of the State of New York on behalf of all employees providing services related to the construction or design of the Facility.
2. *Commercial General Liability Insurance – Construction Contractor.* Contractor shall cause the Construction Contractor to maintain Commercial General Liability Insurance (“CGL”) covering claims for property damage and bodily injury, including death, and personal and advertising injury that may arise from any of the operations arising from the construction of the Facility. Such CGL must:
 - a. be in the amount of at least \$2,000,000 per occurrence for bodily injury, including death, and property damage and at least \$4,000,000 in the aggregate on a per project basis, unless higher limits are required by the Department of Buildings pursuant to 1 RCNY section 101-08, in which case the limits of CGL must meet or exceed those limits required by the Department of Buildings.
 - b. provide coverage for personal and advertising injury in the amount of at least \$2,000,000.
 - c. Provide coverage for products/completed operations in the amount of at least \$4,000,000.
 - d. provide coverage that is at least as broad as the coverage provided by the latest edition of ISO Form CG 00 01; include coverage for explosion, collapse, or underground damage (XCU), construction means and

- methods, and damage to work performed by subcontractors; and not include an exclusion in an endorsement that would exclude a risk inherent in the construction work.
- e. be “occurrence” based rather than “claims made.”
 - f. include “the City of New York, including its officials and employees” as additional insured with coverage at least as broad as the latest edition of ISO Form CG 20 26.
 - g. include “the City of New York, including its officials and employees” as additional insured with coverage at least as broad as the latest edition of ISO Form CG 20 37 for a minimum period of three years following completion of the construction.
 - h. include a waiver of subrogation in favor of “the City of New York, including its officials and employees.”
 - i. be primary and non-contributing to any insurance or self-insurance maintained by the City.
3. *Commercial General Liability Insurance – Design Consultant.* Contractor shall cause the Design Consultant to maintain CGL covering claims for property damage and bodily injury, including death, and personal and advertising injury that may arise from any of the operations arising from the provision of professional services in relation to the Facility. Such CGL must:
- a. be in the amount of at least **\$1,000,000 per occurrence** for bodily injury, including death, and property damage and at least **\$2,000,000 in the aggregate**.
 - b. provide coverage for **personal and advertising injury in the amount of at least \$1,000,000**.
 - c. Provide coverage for **products/completed operations in the amount of at least \$2,000,000**.
 - d. provide coverage that is at least as broad as the coverage provided by the latest edition of ISO Form CG 00 01.
 - e. be “occurrence” based rather than “claims made.”
 - f. include “the City of New York, including its officials and employees” as additional insured with coverage at least as broad as the latest edition of ISO Form CG 20 26.
 - g. include a waiver of subrogation in favor of “the City of New York, including its officials and employees.”
 - h. be primary and non-contributing to any insurance or self-insurance maintained by the City.
4. *Builders Risk Insurance – Contractor or Construction Contractor.* Contractor shall provide or shall cause its Construction Contractor to provide Builders Risk Insurance through acceptance of the Facility. Such Builders Risk Insurance must:
- a. include the City of New York as a loss payee as its interests may appear and as an additional insured.

- b. provide coverage on a replacement cost basis with limits equal to the total completed value of the Facility.
 - c. cover all buildings and/or structures involved in the construction of the Facility and any property that is intended to become a permanent part of such building or structure, whether such property is on site in transit, or in temporary storage.
 - d. be provided on an "all risk" or "special perils" basis.
 - e. include coverage for debris removal, water damage (whether or not driven by wind, including storm surge), windstorm (including named windstorm), pollutant cleanup and removal, expediting expenses, earth movement, and ordinance or law (including demolition cost coverage and increased cost of construction coverage).
 - f. include a waiver of subrogation in favor of "the City of New York, including its officials and employees."
 - g. be primary and non-contributing to any insurance or self-insurance maintained by the City.
5. *Commercial Automobile Liability Insurance – Construction Contractor and/or Design Consultant.* Contractor shall cause its Construction Contractor (and the Design Consultant, if using vehicles in the provision of services) to maintain Commercial Automobile Liability Insurance for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with the construction or design, as applicable, of the Facility. Coverage shall have a minimum limit of at least **\$1,000,000 per accident** and be at least as broad as the latest edition of ISO Form CA 00 01. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by the City. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.
6. *Professional Liability Insurance – Design Consultant.* Contractor shall cause its Design Consultant to maintain Professional Liability Insurance or Errors and Omissions Insurance appropriate to the type(s) of such services to be provided under Contractor's agreement with the Design Consultant with a minimum limit of **\$1,000,000 per claim**. The policy or policies shall cover the liability assumed by the Design Consultant arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Design Consultant or anyone employed by the Design Consultant. If the Design Consultant provides such coverage on a claims-made policy, such policy shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, Contractor shall cause its Design Consultant to purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

7. *Other Insurance.* If Contractor requires any other subcontractor (e.g., a construction manager) providing services in relation to the construction of the Facility to maintain insurance and requires such subcontractor to name Contractor as an Additional Insured, Contractor shall ensure that the subcontractor name the City, including its officials and employees, as an Additional Insured.

C. General Requirements for Insurance Coverage and Policies. The following requirements apply to the coverages described above in sections B(2)-(6).

1. *Ratings.* All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/VII, a Standard and Poor's rating of at least A, a Moody's Investors Service Rating of at least A3, or a Fitch Ratings rating of at least A- unless prior written approval is obtained from the Department in consultation with the City Corporation Counsel.
2. *Responsibility for Costs.* Except as may be otherwise provided in this Agreement, the named insured on the applicable insurance policy shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. Proof of Insurance.

1. *Initial Proof.* Contractor shall obtain proof of insurance from the Design Consultant and Construction Contractor. Such proof must include the additional insured endorsements and loss payee endorsement described herein. At a minimum, Contractor shall provide the certificate of insurances, certification of broker or agent (in Appendix A) and additional insured endorsements and loss payee endorsement to the Department prior to the commencement of the Design Consultant's and Construction Contractor's work, as the case may be.
2. *Proof of Renewal.* Proof confirming renewals of insurance shall be submitted to the Department prior to the expiration date of coverage of policies required under this Appendix INS. Such proof shall conform to the requirements of (D)(1) above.
3. *Demand for Policies.* Contractor shall include the following provision in its agreements with the Design Consultant and Construction Contractor: "You must provide a copy of any policy required by this agreement to the City of New York upon demand for such policy by the Commissioner or the City Corporation Counsel."

E. Operations of the Construction Contractor and Design Consultant.

1. *Commencement of Services.* Contractor shall not permit the Construction Contractor or Design Consultant to commence their respective services unless and until all required proofs of insurance, which are applicable to their respective services, have been submitted to and accepted by the Department.
2. *Continuous Coverage Required.* Contractor shall be responsible for ensuring that the Construction Contractor and Design Consultant provide continuous insurance coverage in the manner, form, and limits required by this Appendix INS for the duration of their work, including applicable guarantee periods (and for the period described in (B)(2)(g)). If any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, Contractor shall cause the work covered by the insurance to cease until proof of insurance is provided.

F. Miscellaneous Contractual Requirements.

1. *Notices.* Contractor's agreements with the Design Consultant and the Construction Contractor must state: "Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this agreement, you shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this agreement (including notice to Commercial General Liability insurance carriers for events relating to the Contractor's own employees) within the time required by the policy, but no later than 20 days after the event. For any policy where the City of New York is an Additional Insured or Loss Payee, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. You shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required hereunder, you shall at all times fully cooperate with the City of New York with regard to such potential or actual claim."
2. *Limits.* Contractor's agreements with the Design Consultant and the Construction Contractor must state: "The City of New York's limits of coverage for all types of insurance required herein shall be the greater of (i) the minimum limits set forth herein or (ii) the limits provided to the

named insured under all primary, excess, and umbrella policies of that type of coverage.”

II. INDEMNIFICATION

- A. Construction Contracts:** Contractor shall include the following indemnification clause, or a substantially similar indemnification clause, protecting the City in its agreement with the Construction Contractor:

To the fullest extent permitted by law, you shall defend, indemnify, and hold harmless the City of New York, including its officials and employees (the “Indemnitees”) against any and all claims (including but not limited to claims asserted by any of your own employees or those of your subcontractors) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys’ fees and disbursements) allegedly arising out of or in any way related to your operations or the operations of your subcontractors in the performance of this agreement or from your and/or your subcontractors’ failure to comply with any of the provisions of this agreement or of the law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this indemnification by way of cross-claim, third-party claim, declaratory action or otherwise. The indemnification obligation hereunder contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

- B. Design Contracts:** Contractor shall include the following indemnification clause, or a substantially similar indemnification clause protecting the City in its agreement with the Design Consultant:

Indemnification for Injury or Property Damage

To the fullest extent permitted by law, you shall defend, indemnify, and hold harmless the City of New York, including its officials and employees (the “Indemnitees”), against any and all judgments for damages on account of any injuries or death to any person or damage

to any property, and reasonable costs and expenses to which the Indemnitees may be subject to or which they may suffer or incur allegedly arising out of any of your operations and/or your subcontractors' operations under this agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with law or any of the requirements of this agreement. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by you, the Indemnitees shall be partially indemnified by you to the fullest extent permitted by law. In the event you fail to provide a defense of the Indemnitees of a claim upon demand, you shall reimburse the Indemnitees for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, you are not obligated to provide the Indemnitees with a defense or reimbursement for attorney's fees.

Infringement Indemnification

To the fullest extent permitted by law, you shall defend, indemnify, and hold harmless the Indemnitees against any and all claims, judgments for damages, and reasonable costs and expenses to which the Indemnitees may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by you and/or your employees, agents, or subcontractors in the performance of this agreement. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by you, the Indemnitees shall be partially indemnified by you to the fullest extent permitted by law.

EXHIBIT D

**REVOCABLE LICENSE TO USE CERTAIN
CITY OWNED BUILDINGS AND LEASED PREMISES**

1. ACC is hereby granted a revocable license to enter into the City-owned and buildings leased by the City, (collectively, as used in this Exhibit D, the "Premises") without charge, and may occupy such for the sole purpose of, and for so long as it is, performing the services specified in the Agreement of which this Exhibit D is a part. The City reserves the right, in its sole discretion, to revoke any and all of such licenses, and to provide suitable alternative sites for shelter and admitting operations.

FULL SERVICE SHELTERS LOCATED IN CITY-OWNED OR CITY-LEASED BUILDINGS:

As of the commencement date of this Agreement, the following Full Service Shelters are located in City-owned or in buildings for which the City has entered into an underlying lease:

Manhattan Shelter
326 East 110th Street
New York, NY 10029

Brooklyn Shelter
2336 Linden Boulevard
Brooklyn, NY 11208

Staten Island Shelter
3139 Veterans Road West
Staten Island, NY 10309

ADMISSIONS FACILITIES LEASED BY THE CITY

As of the commencement date of this Agreement, the City holds leases for the following animal Admissions facilities, and ACC shall occupy and operate same for the purposes set forth in Annex A for as long as such leases are in effect and for the sole purpose of and for so long as it is performing the services specified in this Agreement. ACC shall perform all responsibilities of the City under the underlying leases for the Premises between the City and its Landlord. The City reserves the right in its sole discretion to designate suitable alternative sites for shelter and animal admission operations should the existing leases not be renewed or reassigned during the term of this Agreement.

Queens Animal
Admissions Facility

Bronx Animal
Admissions Facility

92-29 Queens Blvd
Rego Park, NY 11374

1 Fordham Plaza
Bronx, NY 10458

2. **Premises Leased by the City.** With respect to the Premises leased by the City, ACC shall abide by the terms of the City's lease as it applies to subleases, except for rent, which shall be paid by the City, shall not lay waste to the Premises, and shall provide such facilities management services as may be required by the existing underlying leases, and renewals if any, and as may be required pursuant to any new leases entered into during the term of this Agreement for the purpose of ACC occupying same and providing services hereunder, and in addition, to the extent funds are provided in the Budget to this Agreement for the purpose of management services, to provide the following services to the extent such services are not provided by the lessor thereof under the terms and conditions of the underlying City lease:

- Basic maintenance of public areas, and landscaped areas; including but not limited to, snow shoveling, and rubbish removal; and repair of minor sidewalk defects, if the Parties agree that such minor sidewalk defect repairs can be effected in a more timely manner by ACC;
- Unless underlying lease of the Premises with a third party provides such services, basic maintenance and repair of windows and skylights through repairs subcontracted by ACC as approved by DOHMH;
- Basic preventive maintenance monitoring in connection with the Premises' mechanical systems (HVAC, fire alarm, security alarm and plumbing system) by promptly submitting work order requests in writing to the Department if any of the building systems are malfunctioning, by periodic testing to ensure that the alarms are in working order, and by keeping the plumbing system free of clogs;
- Maintenance of and supply of fire extinguishers (including placement and code compliance);
- Daily cleaning and sanitization once per day, and more frequently as needed, of areas and items used by humans, including bathrooms, public areas, offices, kitchen, lounge;
- Daily cleaning and sanitization not less often than once per day, and more frequently as needed, of areas and items used by animals, including all kennel areas, animal enclosures, water bowls, hallways, and floors, daily at a minimum, and more frequently as needed;
- Routine Maintenance, as needed - Maintain kennel equipment and fixtures, replace light bulbs, ballasts, and make minor repairs, for example replace faucets or faucet parts, clean gutters to avoid drain blockage, clear toilet/drain stoppages, reattach loose floor tiles, repair or replace interior and exterior keys and cylinders and immediately provide the Department with copies of keys for all replacement locks.
- Contractor services as required for installation and maintenance of equipment (including computer associated equipment), fixtures or services, such as refrigeration, water treatment, disposal of regulated or hazardous waste.

- Installation, provision for, and maintenance of telephones and telephone services.
 - Trash disposal and placement for collection by City Sanitation of non-hazardous waste and disposal of medical waste in accordance with the Building Rules annexed hereto, as controlled by the underlying lease, if applicable;
 - Pest Control, as needed; and
 - Collect and properly dispose of animal waste throughout the day.
3. **Premises Owned by the City.** With respect to the Premises owned by the City, ACC shall not lay waste to the Premises, and shall provide the following services for which ACC shall be compensated at its incurred cost up to the not-to-exceed allocated amounts specified in Exhibit B for facilities management:
- Basic maintenance of public areas, and landscaped areas; including but not limited to, snow shoveling of all paved areas and outside steps and entry areas, rubbish removal;
 - Repairs to windows and skylights and repairs, if damage is not the result of normal wear and tear;
 - Basic preventive maintenance monitoring of the Premises' mechanical systems (HVAC, fire alarm, security alarm and plumbing system) to keep them in good working order and condition by observation, prompt submission of work order requests whenever repairs are needed, and testing to ensure that the alarms are in working order and advising the Department if they are not, and by keeping the plumbing system free of clogs through efforts that include, without limitation, staff and volunteer training, appropriate signage and drain covers;
 - Maintenance of and supply of fire extinguishers (including placement and code compliance);
 - Daily cleaning and sanitization once per day, and more frequently as needed, of areas and items used by animals and that are used by humans, including bathrooms, public areas, offices, kitchen, lounge, and animal areas;
 - Routine Maintenance, as needed – Maintain kennel equipment and fixtures, replace light bulbs, ballasts, and make minor repairs, for example replace faucets or faucet parts, clean gutters to avoid drain blockage, clear toilet/drain stoppages, reattach loose floor tiles, repair or replace interior and exterior keys and cylinders and immediately provide the Department with copies of keys for all replacement locks.
 - Contractor services as required for installation and maintenance of equipment (including computer associated equipment), fixtures or services, such as refrigeration, water treatment, disposal of regulated or hazardous waste.
 - Installation, provision for, and maintenance of telephones and telephone services.
 - Trash disposal and placement for collection by City Sanitation of non-hazardous waste, and disposal of medical waste in accordance with subsection 4 below in this Exhibit;

- Pest Control, as needed.
 - Clean all kennel areas, animal enclosures, water bowls, hallways, and floors, daily at a minimum, and more frequently as needed; and
 - Collect and properly dispose of animal waste throughout the day.
4. The Department may conduct an engineering audit review of major capital repairs. The Department will be provided access to all Full Service Shelters and Admissions Facilities for the purposes of performing services on its part to be provided hereunder and for the purpose of making repairs and monitoring programmatic activities under this Agreement. ACC shall cooperate in all reasonable respects with the City and its agencies, including, without limitation, in all capital improvement projects, renovations, inspections, and other activities related to the repair, maintenance, integrity or safety of City facilities and shall allow all City representatives access at any time and from time to time. If the City determines that such performance of services by the City may be of a nature that would be disruptive to ACC operations for any extended period of time, the Department will endeavor to provide advance notice of its access needs as far in advance as is practicable, and in consultation with ACC, to try to schedule repairs in such a manner to minimize disruptions of ACC services.
5. Upon commencement of this Agreement, the Premises shall be in an “as is” condition. To the extent that funds are provided in the Budget to this Agreement for the purpose of maintaining and repairing the Premises licensed hereunder, ACC will ensure that all necessary repairs of the above-specified Full-Service Shelters and Admission Facilities, and of equipment purchased for the provision of the services set forth in Annex A, are made in an expeditious manner by qualified and responsible contractors, at a reasonable cost, through a competitive selection and procurement process that meets the Department’s competitive procurement requirements as set forth in the body of this Agreement. ACC must seek at least verbal authorization for emergency repairs, as confirmed via email to the Department’s Assistant Commissioner for Operations in the Office of Administration, or his/her designee, and must obtain Department pre-authorization for sole source procurements after presenting written justifications with its authorization requests. When issuing a competitive solicitation, ACC shall accept the lowest responsible bid or quote, unless otherwise authorized by the Department.

An underlying License to occupy the Premises for purposes of delivery of the Program Services to be delivered by ACC under this Agreement is deemed to be in effect for the above identified Premises as of the date of this Agreement and shall continue for so long as the Department is administering each of the City-owned or leased properties, unless and until such licensed use as to any or all of the Full Service Shelters and Admissions Facilities that are part of the Premises as noted above is/are terminated by the Department or the City, and upon such

termination, all right of ACC in said Premises by virtue of the License granted hereunder shall cease and terminate.

The City reserves the right in its sole discretion to designate suitable alternative sites for shelter and admissions operations during the term of this Agreement and shall allocate appropriate funding and support to ACC to occupy and operate such suitable alternatives. Upon such revocation or termination, ACC shall remove its personal property from the Premises within such reasonable time as is given by the Department in any notice which requires ACC to vacate the Premises. However, if improvements have been made to the Premises, which have been installed by, or paid for by the Department, then such improvements shall remain with the Premises upon termination, or, at the option of the Department, be transferred to alternative premises that are designated by the Department, unless the Parties agree otherwise in a writing signed by an authorized representative of each party, or unless an underlying City lease requires otherwise, in which case the Parties shall cooperate in salvaging City property in accordance with City regulations. Personal property of ACC that is left on the Premises beyond the date fixed for vacating by ACC, or beyond such other later agreed upon period agreed upon in writing by the Parties, shall be deemed abandoned and thereupon all right, title and interest in and to such personal property shall be automatically transferred to the City without any further instrument or documentation being required. Any rights the Department may have under the License granted hereunder and any laws, rules or regulations affecting the conduct of activities permitted hereunder and the restoration of the Premises shall survive the revocation or termination of this License.

6. ACC expressly agrees that The Department shall have the unconditional right to revoke the License granted hereunder, with or without cause, and terminate the term hereof, upon not less than twenty-four (24) hours prior written notice to ACC, any provision of the License granted hereunder to the contrary notwithstanding. In the event of such revocation and termination, ACC shall fully cooperate with the Department in any substitution of replacement Premises for existing Premises, or in the transfer of the Premises to the Department's designee.
7. ACC understands and agrees that nothing, including without limitation, the length of time the use by ACC of the Premises has been in effect, the cost of any improvements, capital or otherwise, or any other cost, expense or liability assumed by ACC, shall give rise to any greater rights than have been expressly granted ACC hereunder, nor shall they affect the Department's unconditional right of revocation. Any and all obligations and/or liabilities of ACC under the License granted hereunder shall survive the revocation or termination thereof.
8. ACC shall carry out its animal care and control Program in the Premises in accordance with all applicable laws, orders, rules and regulations of all federal, state and municipal bodies having jurisdiction. ACC shall not use or store any substance or material in or about the

Premises which may increase risks associated with the use or occupancy of the Premises that would nullify or otherwise affect ACC insurance policies required in connection with its occupancy of the Premises, unless use or storage thereof is specifically approved by the Department and its insurers.

9. During the term of this Agreement, ACC will maintain all required licenses necessary to operate animal shelters in the City of New York.
10. ACC will use the Premises for the purpose of performing Program Services, and shall not assign either in whole or in part, or lease or sublet or allow any suboccupancy in any manner, nor pass any interest in or to the Premises to any other person, firm or corporation whatsoever, either by the acts of the ACC or by operation of law, without the prior consent in writing of the Department.
11. ACC will not install any access wiring or cabling to its Premises through the Building, without the prior written consent of the Department, unless such installation will not require any core drilling into the building structure. All additions, including, without limitation, access wiring and cabling and trade fixtures, shall, at the option of the Department, become the property of the Department when attached to the Premises.
12. ACC must not permanently attach any advertisement, notice, sign, or image (collectively "Signage"), using any type of hardware, to the exterior of the Premises, or to the interior of the Premises, if the item to be attached weighs more than five (5) pounds, without obtaining the Department's prior written approval of the method of attachment, which shall not be unreasonably withheld. As used in this paragraph, "permanent" shall mean affixed to surfaces in such a manner that, when removed, would leave a marred surface which would require refinishing. ACC's rights to attach items are also subject to any third party leasing requirements applicable thereto. Such prior consent requirement as to the method of attachment shall not apply to temporary signage, weighing less than five (5) pounds, which are attached by methods such as tape, and which will not cause damage to the wall or other surfaces of the Premises, if and when removed.
13. No structural alterations to the Premises, and/or alterations that materially impact the mechanical, electrical or HVAC systems may be made by ACC without prior written approval by the Department. All alterations made by ACC must be adequately covered by ACC insurance and must comply with all applicable laws, codes, rules, and regulations of all governmental authorities having jurisdiction. For all alterations undertaken by ACC, ACC will, before commencing such alterations, advise the Department, and comply with the Department's Facilities Planning and Administrative Service Bureau subcontracting requirements, including without limitation, insurance requirements, labor harmony

requirements, required completion date, and other completion requirements. The Department will have the right to inspect completed alterations work and require corrections if needed. If ACC does not undertake such corrective actions as the Department may require within the time required by the Department, or at a minimum, initiate and diligently pursue curative action within 10 days of a notice by the Department that such corrective action is required, or within such longer curative period as the Department may require in such notice for the initiation of curative action and diligent pursuit of corrective action, then the Department may initiate such curative action itself, and ACC shall pay the costs thereof, on demand, to the Department from ACC funds that are other than the funds payable to ACC by DOHMH hereunder.

Temporary alterations may be allowed by the Department for emergency situations, but the Department must be immediately advised thereof, and all such alterations approved by the Department as temporary shall be removed and the affected Premises shall be restored to the condition in which it was prior to such temporary alteration within six weeks of such temporary installation, unless the Department grants a longer time for the temporary installation. Approvals of temporary installations by the Department shall be expedited to the extent reasonably practicable in response to the urgency of the situation to be addressed.

14. It shall not be deemed unreasonable for the Department to withhold its consent to a proposed Premises alteration that would:
 - change the use of the Premises to uses other than the Program Services to be performed hereunder;
 - create neighborhood controversy in the opinion of the Department;
 - adversely affect any mechanical system, electrical system, sanitary condition, or the exterior of the Premises;
 - adversely affect the security of the Premises;
 - involve the installation of risers or conduits outside of the Premises or otherwise require work outside the Premises (other than minor hook-ups in non-licensed space);
 - require the Department or any other occupant of the Premises to perform work in or to the Premises, other than to a minimal extent; or
 - fail to comply with any legal or insurance requirement.
15. ACC shall not change the use of the Premises, or portions thereof, without prior approval of the Department, unless the use is of a temporary nature for reason of unforeseen animal care and control requirements in response to a particular acute need, and in such case, the Department will be notified as soon as is practicable.
16. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with the Agreement to which this Exhibit D is attached, ACC shall notify in writing all of its insurance carriers that issued potentially responsive policies of any

such event relating to any operations under the license granted hereunder (including notice to Commercial General Liability insurance carriers for events relating to the ACC's own employees) no later than 20 days after such event, or as soon as the event is known or should have been known by ACC, but in any event within insurance policy requirements. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The ACC shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

17. ACC shall comply with the Premises Rules attached hereto as Schedule I to this Exhibit D, as the same may be changed and supplemented by the Department from time to time, provided that such changes and supplements do not contradict anything contained in this Exhibit D, and are reasonably related to the existing subject matter of the Building Rules, for example if sanitation law require changes in the handling of garbage at the Shelters, the Department may modify the Building Rules to incorporate such changes, or if maintenance and repair costs to the Department are affected by the manner in which the facilities are maintained, then the maintenance obligations with regard to preventive maintenance may be added to the Building Rules. Nothing contained herein shall obstruct or prevent the Department's entry, itself, or through its agents or representatives, at all reasonable times, into the Premises to perform cleaning, maintenance and building services, to inspect the Premises, and to consult with the ACC.
18. Wherever in this Exhibit D, consent of the Department is required, such consent shall not be unreasonably withheld.
19. Schedule I to this Exhibit D is hereby incorporated into this Exhibit D, and this Exhibit D itself is a part of the Agreement to which it is attached.

SCHEDULE I

TO

EXHIBIT D

PREMISES RULES

The following are the Premises Rules, with which ACC must comply, and the Department has the right to change or supplement these Premises Rules from time to time during the term of, or, with respect to City-leased Premises, to substitute certain Premises rules that apply to the City's occupancy under the applicable lease, in lieu of, or in addition to, certain of the following Premises Rules for Premises specifically affected by an underlying lease:

1. The grills, louvers, skylights, windows and doors that reflect or admit light and/or air into the Premises and/or within and between common and interior areas of the Premises shall not be covered nor obstructed by ACC, nor shall any articles be placed on the radiators or convectors.

2. If the Premises locks are subject to a Premises master key, then all locks or bolts of any kind shall be operable by the Premises' Master Key. No locks shall be placed upon any of the doors and windows by the ACC, nor shall any change be made in locks or the mechanism thereof which shall make such locks inoperable by the Premises' Master Key, if any. If there is no Premises Master Key that operates multiple Premises locks, among them the main door to the Premises or certain interior doors within the Premises, and if the ACC places its own locks on entrance doors or within the Premises, then ACC shall coordinate new locks to be affixed to the doors, if any, with the Department's Building Manager for the Premises, and shall deliver copies of all such keys in the quantities reasonably required by the Department's Premises Manager on or before such installations. ACC shall, upon termination of its License, if any, deliver to the Department all keys of offices and lavatories, either furnished to, or otherwise procured by ACC. The ACC shall keep an inventory of all keys issued to persons under the ACC's direction and control and to advise the Department's Premises Manager of any loss of such keys and the circumstances thereof, including, without limitation, the failure to return such keys to the ACC upon termination of employment of any employee.

3. Access to the Premises' roof, mechanical, electrical, information technology and telephone wiring rooms or cabinets shall be restricted to personnel who are specially trained to perform functions related thereto.

4. ACC shall not permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Department.

5. ACC shall not cause any unnecessary labor for the Department's cleaning staff by reason of such ACC's carelessness or indifference in the preservation of good order and

cleanliness.

6. The Department will provide limited waste removal services for non-regulated waste. ACC shall be responsible for the storage, handling, transport, and disposal of waste which is regulated by Federal, State or local law, or applicable Sanitation Department or other governmental regulations, including, without limitation, medical waste, hazardous chemicals, electronics, ballasts, batteries, Mercury-containing equipment and lamps, sharps, broken waste, equipment, refrigerators, and air conditioners; and such regulated waste shall be stored, handled, transported and disposed of in conformance with laws and regulations applicable to such regulated waste. As directed by the Department's Building Manager for each of the licensed Premises, ACC shall arrange for separation of the waste in its Premises into recycled waste bins supplied for that purpose by ACC, for its recyclable waste, including, without limitation, bottles and cans and separated paper waste, in such manner and with such divisions as are required by the designated Department's Buildings Manager, which permits the Department to efficiently comply with the setout rules of the New York City Department of Sanitation for nonprofits and compliance with the Department of Sanitation's recycling requirements. If the Permitted Activities of the ACC generates medical waste, the ACC shall be required to collect, package, label, store, treat, transport, and dispose of such medical waste, and file all reports required in connection therewith, all in accordance with all legal requirements, including, without limitation all Federal, State and local laws and implementing regulations applicable to such regulated waste. As between the Parties, the Department shall have no responsibility with respect to the handling, storage, transportation, or disposal of such medical waste or any reports generated in connection therewith. ACC shall ensure that maintenance functions are performed by trained personnel and may be performed by trained volunteers, all of whom must be thoroughly instructed in the tasks to be undertaken.

7. ACC shall not deface any part of the Premises. No boring, cutting or stinging of wires shall be permitted, except with prior consent of the Department, which consent shall not be unreasonably withheld, and such wire activity, if permitted, shall be carried out as the Department may direct.

8. The water and wash closets, electrical closets, mechanical rooms, fire stairs and other plumbing fixtures, whether located indoors or outdoors, shall not be used for any purposes other than those for which they were constructed and no paper towels, cloth towels, sweepings, rubbish, rags, acids, or other substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the ACC where ACC, or its employees, representatives, guests and business invitees, caused the same.

9. Canvassing or soliciting in the Premises is prohibited unless such canvassing is related to ACC's animal care and control Program activities.

10. Except as set forth in the License, ACC's requirements for above standard services to the Premises will be addressed only upon written notice delivered to the Department's Building Manager for the Premises.

11. ACC shall not use the Premises for any purpose that may be dangerous to persons or property, nor shall the ACC permit in, on or about the Premises, any items that may be dangerous to persons or property, including, without limitation, firearms or other weapons or any explosive or combustible articles or materials.

12. Smoking is prohibited in, on or about the Premises and in the surrounding area within fifty feet of the Premises.

13. The Department shall not be responsible to the ACC or to any other person or entity for the non-observance or violation of these Premises Rules.

14. ACC shall perform all necessary cleaning, waste disposal (as described above) and maintenance tasks itself, and keep the Full Service Shelters and Admissions Facilities in good operating and sanitary condition in a manner and with such frequency that will result in humane conditions for all of the animals at the Full Service Shelters and Admissions Facilities, which will include, dusting, mopping, sweeping, and collection and removal of waste. ACC shall keep all drains clean and free of rubbish. ACC shall clean and maintain all of its equipment in good working order, subject to reasonable wear and tear. In its cleaning, ACC will use the standard cleaning products approved for use by the City in buildings owned and operated by the City. If the ACC requires the use of certain cleaning products, ACC must first demonstrate that such cleaning product is approved for use by the City of New York in City facilities.

15. For each and every cleaning product ACC, and its subcontractors, employees, agents, and representatives, intend to use, before use, ACC will first submit a Material Safety Data Sheet ("MSDS") to the Department's Building Manager for the Premises for review and approval by the Department prior to utilizing the product.

16. The City is deeply committed to respecting the environment. ACC is encouraged to use "Green Seal" eco-friendly products such as soaps, cleaners, light bulbs (e.g., energy-efficient compact fluorescent light bulbs/CFLs), toilet paper, paper towels, and paint. An approved product listing compiled by New York State's Green Cleaning Program can be found at:

<https://greencleaning.ny.gov/products.asp>

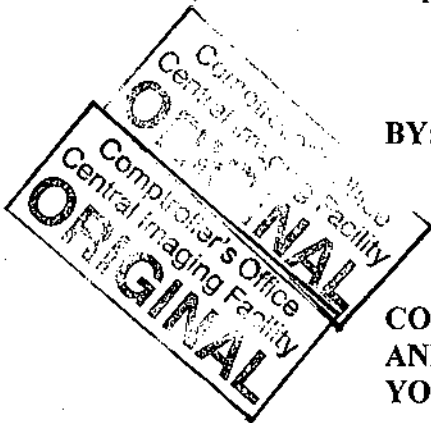
17. On or before a date that is six months after the commencement date of the Agreement of which these Premises Rules form a part, ACC shall draft, and submit for the Department's review and approval, an Animal Facilities Maintenance Protocol, a manual which sets forth the maintenance tasks that it will perform at each of its facilities and the frequency with which such maintenance tasks are to be performed, as well as setting forth tasks and standards for the performance of such maintenance tasks and its staff training program for training staff to perform such tasks. Upon request, the Department will meet

and confer with ACC to inform such drafting. Such manual will provide the basis for the Department's Bureau of Facilities Planning and the Department's Bureau of Administrative Services and Operations to manage the Department's animal facilities and to sequence its own planning and operational schedules for the various animal shelters and animal admissions sites.

IN WITNESS WHEREOF, the City has caused these presents to be executed in triplicate by the Agency Chief Contracting Officer of the Department of Health and Mental Hygiene, and ACC has caused these presents to be executed in triplicate by the duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

THE CITY OF NEW YORK
Department of Health and Mental Hygiene

BY: *Oxiris B...*



CONTRACTOR:
ANIMAL CARE AND CONTROL OF NEW YORK CITY, INC.

BY: *Risa Weinstock*

NAME: RISA WEINSTOCK

TITLE: PRES. & CEO

APPROVED AS TO FORM/ CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

Date:



Animal Care and Control of New York City, Inc.
PIN: 19AA003401R0X00

[Faint, illegible text]

[Circular stamp or seal, illegible text]

[Faint, illegible text]

[Faint, illegible text]

Mr. Joseph [illegible]
111 [illegible]
New York, N.Y. 10001

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/23/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER ISU/Szerlip & Company, Inc. 288 Main Street Millburn, NJ 07041-1031 973 467-0400	CONTACT NAME: Helke Magerka PHONE (A/C, No, Ext): [REDACTED] FAX: [REDACTED] E-MAIL: [REDACTED]@com
	INSURER(S) AFFORDING COVERAGE
INSURED Animal Care & Control of New York City 11 Park Place, Suite 805 New York, NY 10007	INSURER A : Alliance of Nonprofits for Insurance 10023
	INSURER B : The Travelers Insurance Co. 25658
	INSURER C : Philadelphia Indemnity Insurance Co. 18058
	INSURER D : State Insurance Fund 36102
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			[REDACTED]	02/28/2018	02/28/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$500,000 MED EXP (Any one person) \$20,000 PERSONAL & ADV INJURY \$1,000,000 GENRA. AGGREGATE \$3,000,000 PRODUCTS - COMP/OP AGG \$3,000,000 \$
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			[REDACTED]	02/28/2018	02/28/2019	COMBINED SINGLE LIMIT (Per accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10000			[REDACTED]	02/28/2018	02/28/2019	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				
A	Comm Property			[REDACTED]	02/28/2018	02/28/2019	Blanket BPP \$1,222,648 Special Form Replacement Cost

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: Location #1 - 11 Park Place, Suite 805, New York, NY 10007, Location #2 - 326 East 110th Street, Manhattan, NY 10029, Location #3 - 2336 Linden Boulevard, Brooklyn, NY 11208, Location #4 - 3139 Veterans Road, Staten Island, NY 10309, Location #5 - 92-99 Queens Blvd., Rego Park, NY 11374 and Location #6 - 464 East Fordham Road, Bronx, NY 10458; City of New York, including its employees, are named as additional insured by written contract, as their interest may appear.

CERTIFICATE HOLDER NYC Department of Health and Mental Hygiene 42-09 28th Street Long Island City, NY 11101	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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POLICY NUMBER: 2018-35278
 Named Insured: Animal Care & Control of New York City, Inc.

COMMERCIAL GENERAL LIABILITY
 CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
 CONTRACTORS – SCHEDULED PERSON OR
 ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
The City of New York, including its officials and employees	All insured premises and operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or



**Workers'
Compensation
Board**

**CERTIFICATE OF
NYS WORKERS' COMPENSATION INSURANCE COVERAGE**

<p>1a. Legal Name & Address of Insured (use street address only)</p> <p>Animal Care & Control of New York City 11 Park Place, Suite 805 New York, NY 10007</p> <p>Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)</p>	<p>1b. Business Telephone Number of Insured</p> <p>212-442-2061</p> <p>1c. NYS Unemployment Insurance Employer Registration Number of Insured</p> <p>1d. Federal Employer Identification Number of Insured or Social Security Number</p> <p>13-3788986</p>
<p>2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</p> <p>NYC Dept of Health and Mental Hygiene 42-09 28th Street Long Island City, NY 11103</p> <p>The City of New York City Hall Park New York, NY 10007</p>	<p>3a. Name of Insurance Carrier</p> <p>The State Insurance Fund</p> <p>3b. Policy Number of Entity Listed in Box "1a"</p> <p>[REDACTED]</p> <p>3c. Policy effective period</p> <p>2-28-18 to 2-28-19</p> <p>3d. The Proprietor, Partners or Executive Officers are</p> <p><input checked="" type="checkbox"/> included. (Only check box if all partners/officers included)</p> <p><input type="checkbox"/> all excluded or certain partners/officers excluded.</p>

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under **Item 3A** on the **INFORMATION PAGE** of the workers' compensation insurance policy). The insurance carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

Will the carrier notify the certificate holder within 10 days of a policy being cancelled for non-payment of premium or within 30 days if cancelled for any other reason or if the insured is otherwise eliminated from the coverage indicated on this certificate prior to the end of the policy effective period? YES NO

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

Please Note: Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: James DalCanton
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: [Signature] 8/23/18
(Signature) (Date)

Title: Chief Operating Officer

Telephone Number of authorized representative or licensed agent of insurance carrier: 973-467-0400

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are **NOT** authorized to issue it.

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.
2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

Location/Site	Location Address	Date Site Opened/Anticipated Opening Date	Construction Completion Date/Anticipated Completion Date	City Owned or Vendor Owned?	Site In Current Contract (Yes/No)?	
Queens Admission Facility	92-29 Queens Blvd,	Open	No Construction/ Renovation	Leased	Yes	
Bronx Admission Facility	464 East Fordham Road	Open	No Construction/ Renovation	Leased	Yes	
Manhattan full service shelter	326 East 110 th Street	Open	Converting garage to adoption center; schedule for completion in 2021	City-owned	Yes	
Brooklyn full service shelter	2336 Linden Boulevard	Open	Extensive renovation and expansion; schedule for completion in 2022	City-owned	Yes	

Staten Island full service shelter	3139 Veterans Road West	Open	Extensive renovation and expansion; schedule for completion in 2019	City-owned	Yes	
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