

# ATTACHMENT 2

## LIBRARY CAPITAL GRANT CONTRACT INFORMATION / REQUIREMENTS

The City-Funded Project under this solicitation is subject to the terms and conditions of a Library Capital Grant Contract between the City of New York, acting by and through the Department of Design & Construction (“DDC”), and the Queens Borough Public Library. Any firm awarded a contract as a result of this solicitation will be required to execute a contract with the Library and said contract will be in conformance with all applicable terms and conditions of the above described Library Capital Grant Contract, including, without limitation, the following provisions:

### Part I.

All City-Funded contracts shall contain provisions specifying that:

- A. The work performed by the contractor must be in accordance with the terms of the agreement between the City and the Library;
- B. Nothing contained in the agreement between the Library and the contractor shall impair the rights of the City;
- C. Nothing contained in the agreement between the Library and the contractor, or under the agreement between the City and the Library, shall create any contractual relation between the contractor and the City; and
- D. The contractor specifically agrees to be bound by Sections 2 (Accounts), 4 (Equal Employment Compliance/Non-Discrimination), and 10 (Investigations) of the NYC Appendix attached to the Library Capital Grant Contract and specifically agrees that the City may enforce such provisions directly against the contractor as if the City were a party to the contract.

### Part II.

#### PASSPort / DLS

1. For all contracts valued at \$100,000 or more, the Contractor and their subcontractors with contracts valued at \$100,000 or more, shall enroll in NYC’s Procurement & Sourcing Solutions Portal (PASSPort) <http://www1.nyc.gov/site/passport/index.page> and provide evidence to the Library that their PASSPort status is “filed”.
2. The Contractor and their subcontractors must also complete the appropriate Division of Labor Services Construction Employment Report, either the Less Than \$750,000 Subcontract Certificate or the full Construction Employment Report. Vendors providing professional services must complete either the Less Than 50 Employees Certificate or the full Supply & Services Employment Report. The originals of these forms must be submitted to the Library, and filed with PASSPort as required. <http://www1.nyc.gov/site/sbs/businesses/contract-compliance.page>

### Part III.

(i) **Insurance.** With regard to each Construction Contract and each Consultant Contract for the performance of work on the Project, such contract shall be subject to and shall incorporate the relevant terms and conditions of the Library Capital Grant Agreement including, but not limited to, the contract requirements contained in LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS – Exhibit B, Section 1.

(ii) **Risk of Operations and Indemnification.** With regard to each Construction Contract and each Consultant Contract for the performance of work on the Project, such contract shall be subject to and shall incorporate the relevant terms and conditions of the Library Capital Grant Contract including, but not limited to, the contract requirements contained in LIBRARY CAPITAL GRANT

## ATTACHMENT 2

CONTRACT REQUIREMENTS Exhibit B, Section 2.

(iii) **Bonding.** With regard to each City-Funded Construction Contract, such contract shall be subject to and shall incorporate the relevant terms and conditions of the Library Capital Grant Contract including, but not limited to, the contract requirements contained in LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS Exhibit B, Section 3.

(iv) **Legal Requirements.** With regard to each City-Funded Construction Contract and City-Funded Consultant Contract, such contract shall be subject to and shall incorporate the relevant terms and conditions of the Library Capital Grant Contract including, but not limited to, the contract requirements contained in LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS Exhibit B, Section 4.

(v) **Assignment of Contract to City.** With regard to each City-Funded Construction Contract and City-Funded Consultant Contract to perform Work involving facilities owned by the City, such contract shall be subject to and shall incorporate the contract requirements contained in LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS Exhibit B, Section 5.

(vi) **Independent Entity.** With regard to each City-Funded Construction Contract and City-Funded Consultant Contract, such contract shall be subject to and shall incorporate the contract requirement contained in LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS Exhibit B, Section 6.

(vii) **Minority and Women-owned Business Enterprise Requirements.** With regard to each Construction Contract and each Consultant Contract where the Construction Contractor or the Consultant will award City-Funded subcontract(s), such Construction Contract or Consultant Contract shall be subject to and shall incorporate the relevant terms and conditions of the Library Capital Grant Contract including, but not limited to, the contract requirements contained in LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS Exhibit B, Section 7.

(viii) **Executive Order No. 50.** The equal employment and non-discrimination requirements of E.O.50, including the submission of Employment Reports as may be required, shall apply to each Construction Contract and Consultant Contract as provided in LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS Exhibit B, Section 8.

### Part IV **Bidding and Award of Subcontracts**

- (i) This Part IV shall be applicable to all City-Funded construction contracts entered into between the Contractor and a subcontractor.
- (ii) Unless otherwise waived by the City and the Library, each contract to which this Part applies shall be entered into on the following basis:
  - a. Issuance of a written bid package or request for proposals that incorporates the relevant contract requirements set forth in this Attachment 2, including but not limited to Part I and LIBRARY CAPITAL GRANT CONTRACT REQUIREMENTS Exhibit B; and
  - b. Receipt of written bids or proposals that are responsive from at least three (3) bidders/proposers who have the requisite experience necessary to perform the work being bid or proposed; if it is not possible to obtain three (3) bids/proposals, the entity conducting the solicitation shall provide to the City and the Library a written explanation

## ATTACHMENT 2

of the failure to meet such requirement, and the City and the Library, in its discretion, may waive such requirement.

- (iii) The awarding entity shall award each contract to which this Part IV applies to the responsive and responsible bidder/proposer whose bid or proposal, in the case of proposals, represents the most advantageous combination of price and technical merit, or whose bid, in the case of a competitive bid, is awarded on a competitive basis. The awarding entity shall provide the City and the Library with a summary of the bids/proposals (“Bid Summary”) that provides the following information:
  - a. Description of the work or services to be performed;
  - b. Description of the manner in which such contract was bid;
  - c. The name of each bidder/proposer submitting a bid or proposal;
  - d. If the bid/proposal is non-responsive, a description of the basis upon which that determination was made;
  - e. If the bidder/proposer is non-responsible, a description of the basis upon which that determination was made;
  - f. The amount of each bid or proposal;
  - g. The criteria to be used in selecting the winning bidder/proposer;
  - h. The justification for selecting the proposed contractor or consultant; and
  - i. Status of bidder’s/proposer’s VENDEX/PASSPort submission, if required.

# ATTACHMENT 2

## EXHIBIT B

### LIBRARY CAPITAL GRANT

#### CONTRACT REQUIREMENTS

For purposes of the Library Capital Grant Contract Requirements in this Exhibit B (“Contract Requirements”), Grantee shall mean the Queens Borough Public Library and the City shall mean the City of New York. In addition to these Contract Requirements, the relevant contract requirements in the NYC Appendix attached to the Library Capital Grant Contract shall apply.

For purposes of these Contract Requirements, the capitalized terms used herein shall have the meanings assigned to such terms in the Grant Agreement.

Section 1. **Insurance.** Every Construction Contract and Consultant Contract for the performance of work on the Project shall require that the contractor take out and maintain, and shall cause its subcontractors to take out and maintain, insurance in accordance with the terms set forth in Section I of Exhibit C to the Grant Agreement. Neither the contractor nor its subcontractors shall commence work under its contract at the site or adjacent thereto unless and until proof of all such insurance has been submitted to and accepted by the Grantee and the City.

Section 2. **Risk of Operations and Indemnification.** Every Construction Contract and Consultant Contract for the performance of work on the Project shall require that:

(a) The contractor shall be solely responsible for the safety and protection of all its employees and shall assume all liability for injuries, including death, that may occur as a result of its performance of this contract whether or not due to the negligence, act or omission of contractor, its agents or subcontractors.

(b) To the fullest extent permitted by law, the contractor shall indemnify, defend and hold the Grantee and the City, and their respective employees and agents (the “Indemnitees”), harmless against any and all claims (including but not limited to claims asserted by any employee of the contractor or its 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 the operations of the contractor or its subcontractors, in the performance of this contract or from the contractor’s and/or its subcontractors’ failure to comply with any of the provisions of this contract or of any law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of contractor’s obligations hereunder by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that 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.

(c) The contractor shall be solely responsible for and shall indemnify, defend and hold the Grantee and the City harmless against any and all claims and judgments for damages for any infringement of copyright, trademark, and patents or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the work, including all costs and expenses which the Grantee and/or the City shall or may incur or be obligated to pay by reason thereof.

## ATTACHMENT 2

(d) Indemnification obligations under the contract shall operate whether or not the contractor or any of its subcontractors have placed and maintained the insurance specified under the contract.

(e) The contractor shall require all of its subcontractors which are engaged to provide services in connection with the work of this contract to agree to the provisions of this Section 2.

Section 3. **Bonding.** Every City-Funded Construction Contract shall require that:

(a) Except as otherwise provided in subparagraph (c) below, if the contract is in an amount equal to or greater than \$1,000,000, the contractor shall be required to obtain performance and payment bonds, each in an amount not less than the amount of the contract. Each such required bond shall be obtained by the contractor, shall be in effect on or before the commencement of performance under the contract, and shall remain in effect until the completion and final acceptance of the contractor's work under the contract. The bonds required pursuant to this Section 3(a) shall be issued by such surety or sureties as are licensed to issue such bonds in the State of New York and are approved by the City, and shall identify both the entity awarding the contract and the City as co-obligees. The performance and payment bonds required hereunder shall be on forms required by the City, including a special form of performance bond for City-Funded Construction Contracts that do not exceed \$5 million, which form has been approved by the U.S. Small Business Administration for participation in its bond guarantee program. The payment bond required hereunder shall be in compliance with the provisions of Section 137 of the New York State Finance Law.

(b) Except as otherwise provided in subparagraph (c) below, in the event that the contractor is not required to provide a payment bond based on the contract amount being less than \$1,000,000, the City will, if required by the terms of Exhibit D of the Grant Agreement, guarantee payment as provided therein.

(c) In the event that the Grantee has demonstrated to the satisfaction of the City that neither the City, the State of New York, any public benefit corporation nor any commission appointed pursuant to law has an ownership interest in all or part of Grantee's Premises, and if determined by the City to be consistent with applicable law (i) the bonding requirements of Section 3(a) shall not apply, and (ii) regardless of the contract amount, the terms of Exhibit D of the Grant Agreement shall not apply and the contractor and its subcontractors shall defend, indemnify and hold harmless the Grantee and the City, their employees and agents, against any and all claims for labor performed and/or services rendered and for materials, equipment and supplies provided (whether incorporated into the work or not) by any person, firm or corporation which furnished labor, material, equipment supplies, or any combination thereof, in connection with the work. Such defense and indemnification shall be consistent with the requirements set forth in Section 2 Risk of Operations and Indemnification.

(d) The contractor shall not require any performance, payment or other bonds of any City-Funded Construction Contractor if the contract amount is less than \$1,000,000.

Section 4. **Legal Requirements.** Every City-Funded Construction Contract and City-Funded Consultant Contract shall require that the contractor comply with all applicable local, state and federal laws, rules, regulations and Mayoral Executive Orders now in force or which may later be adopted ("Legal Requirements"), as such Legal Requirements may be applicable to the work performed under this contract, including but not limited to:

(a) the obligation to obtain, at contractor's expense, all necessary permits, consents, certificates and licenses or other approvals required to be obtained pursuant to applicable law;

## ATTACHMENT 2

- (b) the obligation to ensure that any architect or engineer hired to perform work under this contract is registered in the State of New York;
- (c) the obligation to pay prevailing wages as such rates are established pursuant to Section 220(3) of the Labor Law of the State of New York;
- (d) the requirements of Local Laws 77 of 2003 (Ultra Low Sulfur Diesel Fuel), 38 of 2002 (Living Wage), 118, 119, 120, and 121 of 2005 (Environmentally Preferable Purchasing) and 86 of 2005 (Green Building Standards Law);
- (e) the applicable provisions of the New York City Noise Control Code (New York City Administrative Code §24-216, et. seq. as amended, and related regulations); and
- (f) the provisions of Labor Law Section 220-e and New York City Administrative Code Section 6-108 and any regulations promulgated thereunder.

**Section 5. Assignment of Contract to City.** Every City-Funded Construction Contract and City-Funded Consultant Contract to perform work involving facilities owned by the City shall require that in the event that the contractor defaults under the contract or fails to proceed with the work after being directed to do so by the City, the contract may be assigned to the City.

**Section 6. Independent Entity.** Every City-Funded Construction Contract and City-Funded Consultant Contract shall require that the contractor agree that it is an independent entity, and shall not be deemed to be an agent, employee, servant or representative of the Grantee or the City for any purpose whatsoever. The contractor shall further agree that all personnel provided by the contractor to perform any work required under the contract shall be considered as employed by the contractor, and not by the Grantee or the City, and the contractor alone is responsible for their work and personal conduct, as well as for their direction and compensation. Nothing included in the contract shall impose any liability or duty upon the Grantee or the City to persons, firms, or corporations employed in any capacity by the contractor, or to make the Grantee or the City liable to any person or entity (including governmental agencies) for any act, omission, liability, obligation or taxes (including unemployment insurance and social security) of the contractor or any individual, firm or corporation employed by contractor.

### **Section 7. Minority and Women-owned Business Enterprise Requirements.**

For purposes of this Section 7 only, the following terms shall have the following meanings:

- (i) “Allocation Date” means the date when there is a valid capital appropriation made during the City budget adoption process, provided that a capital project based on such capital appropriation has been identified for the Grantee related to the Project under this Agreement, and has been confirmed by DCLA.
- (ii) “Construction” means construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind.
- (iii) “Joint Venture” means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits and losses of the venture in reasonable proportion to the economic value of its contribution.

## ATTACHMENT 2

(iv) “MBE” means a minority-owned business enterprise certified in accordance with section 1304 of the New York City Charter.

(v) “M/WBE” means an MBE and/or a WBE.

(vi) “M/WBE Status Report” means the M/WBE Participation Goals and Status Report described in Section 7(F).

(vii) “Person” means any business, individual, partnership, corporation, firm, company, or other form of doing business.

(viii) “Professional Services” means services that require specialized skills and the exercise of judgment, including but not limited to, accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, and construction management services.

(ix) “Qualified Joint Venture” means a Joint Venture between one or more MBEs and/or WBEs and another person, in which the percentage of profit or loss to which the certified firm or firms is entitled or exposed for participation in the contract, as set forth in the joint venture agreement, is at least twenty-five percent (25%) of the total profit or loss.

(x) “Standard Services” means services other than Professional Services.

(xi) “Subcontract” means an agreement through which a person, firm or corporation, other than an employee of a Construction Contractor, Consultant, or a subcontractor thereof agrees with a Construction Contractor, Consultant, or a subcontractor thereof to perform Construction, Professional Services, or Standard Services, or any combination of the foregoing, for the Project.

(xii) “WBE” means a women-owned business enterprise certified in accordance with section 1304 of the New York City Charter.

B. This Agreement is subject to the following requirements pertaining to the awarding of City-Funded subcontracts to M/WBEs. The Grantee shall require all Construction Contractors and Consultants to make all reasonable, good faith efforts to award City-Funded subcontracts for Construction, for Professional Services, and for Standard Services to M/WBEs as necessary to meet the participation goals established in subparagraph C below.

C. (i) The M/WBE participation goals established for this Agreement for City-Funded subcontracts are as follows:

(a) for Construction, thirty percent (30%) for M/WBEs. The participation goals may be met by awarding to the following M/WBEs thirty percent (30%) of the total aggregate dollar value of all City-Funded subcontracts for Construction: Black American, Asian American, Hispanic American, or Native American MBE firms, or WBE firms, or any combination of such firms;

(b) for Professional Services, thirty percent (30%) for M/WBEs. The participation goals may be met by awarding to the following M/WBEs thirty percent (30%) of the total aggregate dollar value of all City-Funded subcontracts for Professional Services: Black American, Asian American, Hispanic American, or Native American MBE firms, or WBE firms, or any combination of such firms; and

(c) for Standard Services, thirty percent (30%) for M/WBEs. The participation goals may be met by awarding to the following M/WBEs thirty percent (30%) of the total aggregate dollar value of all City-Funded subcontracts for Standard Services: Black American, Asian American,

## ATTACHMENT 2

Hispanic American, or Native American MBE firms, or WBE firms, or any combination of such firms.

(ii) The foregoing M/WBE requirements (a) shall apply to all City-Funded subcontracts for Construction, for Professional Services, and for Standard Services that are awarded on or after the Effective Date of this Agreement, and (b) may be applied to City-Funded subcontracts for Construction, for Professional Services, and for Standard Services that have been awarded after the Allocation Date, but prior to the Effective Date of this Agreement. If the Grantee chooses to do so, such subcontracts described in item (b) of this subparagraph (C)(ii) will count toward computing the total aggregate dollar value of all City-Funded subcontracts for Construction, for Professional Services, and for Standard Services, as applicable, and the participation goals set forth in Section 7(C)(i) will apply to all City-Funded subcontracts for Construction, for Professional Services, and for Standard Services awarded after the Allocation Date.

D. (i) A City-Funded Construction Contractor or City-Funded Consultant that is an MBE and/or WBE will be permitted to count its own participation toward fulfillment of the relevant participation goals in Section 7(C)(i), provided that (a) the value of each of such Construction Contractor's or Consultant's participation shall be determined by subtracting from the total value of each of their contracts any amounts that each pays to subcontractor(s) they directly contract with, and (b) if each of such Construction Contractor or Consultant is certified as both an MBE and a WBE, such Construction Contractor or Consultant may count its own participation either toward the relevant participation goals for MBEs or the participation goals for WBEs, but not both.

(ii) A City-Funded Construction Contractor or City-Funded Consultant that is a Qualified Joint Venture will be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goals in Section 7(C)(i), provided that (a) the value of each of such Construction Contractor's or Consultant's participation shall be determined by subtracting from the total value of each of their contracts any amounts that each pays to subcontractor(s) they directly contract with, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the Joint Venture agreement, and (b) where a participant in a Joint Venture is certified as both an MBE and a WBE, the amount of its participation in the Joint Venture shall be counted either toward the relevant participation goals for MBEs or the participation goals for WBEs, but not both.

E. Grantee, Construction Contractor(s), Consultant(s), and prospective subcontractor(s) may obtain a list of M/WBE firms from DSBS by visiting its website at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling DSBS at (212) 513-6541, or by visiting or writing DSBS at One Liberty Plaza, New York, New York 10006, 11<sup>th</sup> Floor. If Grantee, Construction Contractor(s) or Consultant(s) becomes aware of a prospective subcontractor(s) that may be eligible for such certification, but has not yet become certified, Grantee, Construction Contractor(s), Consultant(s), and prospective subcontractor(s) may contact DSBS for assistance in seeking certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing DSBS at [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311. Such certification must occur prior to the firm's commencement of work.

F. So as to enable the City to track Grantee's compliance with the participation goals in Section 7(C)(i), Grantee shall submit to the City an M/WBE Participation Goals and Status Report ("M/WBE Status Report") in the format specified in the Guidelines. The first such report shall be submitted on the date agreed to at the Project Commencement Meeting. Thereafter, an updated M/WBE Status Report shall be submitted by Grantee as part of each subsequent Quarterly Progress Report.

G. If after a reasonable, good faith effort, Grantee will not be able to achieve the participation goal(s) in Section 7(C)(i), Grantee may seek an adjustment during the Agreement Term by submitting



## ATTACHMENT 2

to the City a Request for Adjustment of M/WBE Participation Goal(s) Form specifying the efforts made to achieve such participation goal(s) and the reasons an adjustment is being requested. Grantee's failure to meet the participation goal(s) in Section 7(C)(i) without obtaining an adjustment of such participation goal(s) will be treated as a failure to comply with a term and condition of this Agreement, which failure gives rise to the City's right to terminate this Agreement as provided in Paragraph 15(A)(ii) of this Agreement and to exercise remedies as provided in Paragraph 16 of this Agreement.

A. For purposes of this Section 7 only, the following terms shall have the following meanings:

(i) "Allocation Date" means the date when there is a valid capital appropriation made during the City budget adoption process, provided that a capital project based on such capital appropriation has been identified for the Grantee related to the Project under this Agreement, and has been confirmed by DCLA.

(ii) "Construction" means construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind.

(iii) "Joint Venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits and losses of the venture in reasonable proportion to the economic value of its contribution.

(iv) "MBE" means a minority-owned business enterprise certified in accordance with section 1304 of the New York City Charter.

(v) "M/WBE" means an MBE and/or a WBE.

(vi) "M/WBE Status Report" means the M/WBE Participation Goals and Status Report described in Section 7(F).

(vii) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

(viii) "Professional Services" means services that require specialized skills and the exercise of judgment, including but not limited to, accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, and construction management services.

(ix) "Qualified Joint Venture" means a Joint Venture between one or more MBEs and/or WBEs and another person, in which the percentage of profit or loss to which the certified firm or firms is entitled or exposed for participation in the contract, as set forth in the joint venture agreement, is at least twenty-five percent (25%) of the total profit or loss.

(x) "Standard Services" means services other than Professional Services.

(xi) "Subcontract" means an agreement through which a person, firm or corporation, other than an employee of a Construction Contractor, Consultant, or a subcontractor thereof agrees with a Construction Contractor, Consultant, or a subcontractor thereof to perform Construction, Professional Services, or Standard Services, or any combination of the foregoing, for the Project.

(xii) "WBE" means a women-owned business enterprise certified in accordance with section 1304 of

## ATTACHMENT 2

the New York City Charter.

B. This Agreement is subject to the following requirements pertaining to the awarding of City-Funded subcontracts to M/WBEs. The Grantee shall require all Construction Contractors and Consultants to make all reasonable, good faith efforts to award City-Funded subcontracts for Construction, for Professional Services, and for Standard Services to M/WBEs as necessary to meet the participation goals established in subparagraph C below.

C. (i) The M/WBE participation goals established for this Agreement for City-Funded subcontracts are as follows:

(a) for Construction, thirty percent (30%) for M/WBEs. The participation goals may be met by awarding to the following M/WBEs thirty percent (30%) of the total aggregate dollar value of all City-Funded subcontracts for Construction: Black American, Asian American, Hispanic American, or Native American MBE firms, or WBE firms, or any combination of such firms;

(b) for Professional Services, thirty percent (30%) for M/WBEs. The participation goals may be met by awarding to the following M/WBEs thirty percent (30%) of the total aggregate dollar value of all City-Funded subcontracts for Professional Services: Black American, Asian American, Hispanic American, or Native American MBE firms, or WBE firms, or any combination of such firms; and

(c) for Standard Services, thirty percent (30%) for M/WBEs. The participation goals may be met by awarding to the following M/WBEs thirty percent (30%) of the total aggregate dollar value of all City-Funded subcontracts for Standard Services: Black American, Asian American, Hispanic American, or Native American MBE firms, or WBE firms, or any combination of such firms.

(ii) The foregoing M/WBE requirements (a) shall apply to all City-Funded subcontracts for Construction, for Professional Services, and for Standard Services that are awarded on or after the Effective Date of this Agreement, and (b) may be applied to City-Funded subcontracts for Construction, for Professional Services, and for Standard Services that have been awarded after the Allocation Date, but prior to the Effective Date of this Agreement. If the Grantee chooses to do so, such subcontracts described in item (b) of this subparagraph (C)(ii) will count toward computing the total aggregate dollar value of all City-Funded subcontracts for Construction, for Professional Services, and for Standard Services, as applicable, and the participation goals set forth in Section 7(C)(i) will apply to all City-Funded subcontracts for Construction, for Professional Services, and for Standard Services awarded after the Allocation Date.

D. (i) A City-Funded Construction Contractor or City-Funded Consultant that is an MBE and/or WBE will be permitted to count its own participation toward fulfillment of the relevant participation goals in Section 7(C)(i), provided that (a) the value of each of such Construction Contractor's or Consultant's participation shall be determined by subtracting from the total value of each of their contracts any amounts that each pays to subcontractor(s) they directly contract with, and (b) if each of such Construction Contractor or Consultant is certified as both an MBE and a WBE, such Construction Contractor or Consultant may count its own participation either toward the relevant participation goals for MBEs or the participation goals for WBEs, but not both.

(ii) A City-Funded Construction Contractor or City-Funded Consultant that is a Qualified Joint Venture will be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goals in Section 7(C)(i), provided that (a) the value of each of such Construction Contractor's or Consultant's participation shall be determined by subtracting from the total value of each of their contracts any amounts that each pays to subcontractor(s) they directly contract with, and

## ATTACHMENT 2

then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the Joint Venture agreement, and (b) where a participant in a Joint Venture is certified as both an MBE and a WBE, the amount of its participation in the Joint Venture shall be counted either toward the relevant participation goals for MBEs or the participation goals for WBEs, but not both.

E. Grantee, Construction Contractor(s), Consultant(s), and prospective subcontractor(s) may obtain a list of M/WBE firms from DSBS by visiting its website at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling DSBS at (212) 513-6541, or by visiting or writing DSBS at One Liberty Plaza, New York, New York 10006, 11<sup>th</sup> Floor. If Grantee, Construction Contractor(s) or Consultant(s) becomes aware of a prospective subcontractor(s) that may be eligible for such certification, but has not yet become certified, Grantee, Construction Contractor(s), Consultant(s), and prospective subcontractor(s) may contact DSBS for assistance in seeking certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing DSBS at [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311. Such certification must occur prior to the firm's commencement of work.

F. So as to enable the City to track Grantee's compliance with the participation goals in Section 7(C)(i), Grantee shall submit to the City an M/WBE Participation Goals and Status Report ("M/WBE Status Report") in the format specified in the Guidelines. The first such report shall be submitted on the date agreed to at the Project Commencement Meeting. Thereafter, an updated M/WBE Status Report shall be submitted by Grantee as part of each subsequent Quarterly Progress Report.

G. If after a reasonable, good faith effort, Grantee will not be able to achieve the participation goal(s) in Section 7(C)(i), Grantee may seek an adjustment during the Agreement Term by submitting to the City a Request for Adjustment of M/WBE Participation Goal(s) Form specifying the efforts made to achieve such participation goal(s) and the reasons an adjustment is being requested. Grantee's failure to meet the participation goal(s) in Section 7(C)(i) without obtaining an adjustment of such participation goal(s) will be treated as a failure to comply with a term and condition of this Agreement, which failure gives rise to the City's right to terminate this Agreement as provided in Paragraph 15(A)(ii) of this Agreement and to exercise remedies as provided in Paragraph 16 of this Agreement.

### Section 8. **Executive Order No. 50.**

(a) Every First Tier Contract in an amount greater than \$100,000 (whether or not City-Funded) shall be subject to and shall incorporate the equal employment and non-discrimination requirements of Executive Order No. 50 as contained in Section 4 of the NYC Appendix of the Grant Agreement.

(b) Employment Reports shall be submitted by each Construction Contractor and Consultant as may be required by E.O. 50. and the New York City Department of Small Business Services, Division of Labor Services ("DLS").

Employment Report forms may be obtained from DLS either via the DSBS website at [www.nyc.gov/sbs](http://www.nyc.gov/sbs) or by telephone at (212) 513-6323.

# ATTACHMENT 2

## EXHIBIT C

### INSURANCE, RISK OF OPERATIONS, AND INDEMNIFICATION REQUIREMENTS

#### I. INSURANCE PROVISIONS

##### A. Required Insurance

1. A contract shall not be executed and a Purchase Order shall not be issued until all insurance has been obtained, as required below, and such insurance has been reviewed and approved by the Library's Risk Management and Purchasing Department. Insurance must be maintained until the expiration or satisfactory completion of the services provided under an executed agreement,

Within ten (10) days after notification of recommendation to make an award, the Contractor shall mail copies of its insurance certificate(s) as follows: (1) one copy to the Library and (1) one copy to the City of New York as follows:

##### **Certificate Holder**

1. Risk Management  
Queens Borough Public Library  
89-11 Merrick Boulevard  
Jamaica, New York 11432

##### **Certificate Holder**

2. The City of New York  
Department of Design & Construction  
30-30 Thomson Avenue  
Long Island City, NY 11101

The Contractor must also include, along with its mailed insurance certificate(s), a provision that in the event the policies are either canceled, not renewed for any reason, altered or diminished, at least thirty (30) days prior written notice by certified mail, return receipt requested, thereof shall be provided to:

Lawrence Vedilago  
Risk Management  
Queens Borough Public Library  
89-11 Merrick Boulevard  
Jamaica, New York 11432

##### 1. Commercial General Liability

During the term of this Agreement, Contractors, Sub-Contractors and Consultants shall each maintain Commercial General Liability (CGL) insurance, with the coverages indicated below, in the minimum amount of \$1,000,000 per occurrence (combined single limit), \$2,000,000 aggregate. Such policy shall protect the City, the Queens Borough Public Library and the Library Board of Trustees, and the Contractor and its subcontractors performing work at the Project site from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this Agreement, whether such operations are performed by the Contractor or anyone directly or indirectly employed by such party. The coverage provided must be "occurrence" based rather than "claims-

## ATTACHMENT 2

made.” The foregoing policy shall include, without limitation, the following types of coverage: Premises Operations; Products and Completed Operations; Contractual Liability (including the tort liability of another assumed in a contract); Broad Form Property Damage; Medical Payments; Independent Contractors; Personal Injury (Contractual Exclusion deleted); Explosion, Collapse and Underground Property; and Incidental Malpractice. If such insurance contains an aggregate limit, it shall apply separately to the Project.

Such Commercial General Liability Insurance shall name the City including its officials and employees, the Queens Borough Public Library, and the Library Board of Trustees as Additional Insureds. Coverage must be at least as broad as the latest edition of Insurance Services Office (ISO) Form CG 20 26 or its equivalent.

The following language must be added to “The Description of Operations” on each Certificate of Insurance:

*The City of New York, together with its officials and employees, The Queens Borough Public Library and its Trustees, Officers, Agents and Employee are additional insured under this policy with regard to the pass-through contract for the renovation of the Richmond Hill Library located at 118-14 Hillside Avenue, Richmond Hill, NY 11418.*

### 2. Builders’ Risk

Contractors shall maintain Builders’ Risk Insurance. In such instance, such policy shall cover all risks in completed value form for the total value of the work through Substantial Completion for the Project performed by such Contractor (or such portion of the work as may be designated by the City or the Library), as well as the value of any equipment, supplies and/or materials for the Project that may be in storage (on or offsite) or in transit. The policy shall provide coverage for the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of the Contractor’s agents and employees, staging towers and forms, and property of the City or the Library held in their care, custody and control. Such policy shall name the Contractor as Named Insured and the City and the Library as both Additional Insureds and Loss Payees as their interests may appear. The Builders’ Risk policy shall contain the following endorsements:

- (a) In the event a loss occurs at an occupied facility, occupancy of such facility is permitted without the consent of the issuing insurance company; and
- (b) In the event that the insurance policy has been issued by a mutual insurance company, the following language shall be included: “The City of New York and the Queens Borough Public Library are not liable for any premium or assessment under this policy of insurance. The First Named Insured is solely liable therefor.”

### 3. Workers’ Compensation Insurance, Employers’ Liability Insurance, and Disability Benefits Insurance

Contractors, sub-contractors and consultants must 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 in connection with the Project.

### 4. Professional Liability

(a) Any architect or professional engineer retained by the Queens Borough Public Library or its Contractors in connection with the Project shall maintain Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence. The policy shall include an endorsement to cover

## ATTACHMENT 2

the liability assumed by the architect or professional engineer under its contract arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the architect or professional engineer or anyone employed by the architect or professional engineer.

(b) 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 insured agrees to purchase the extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.

### 5. Other Insurance

Contractors must also provide the following insurance:

**Commercial Umbrella Liability** – The Contractor shall maintain Commercial Umbrella Insurance (“Umbrella”) with a limit of no less than two million dollars (\$2,000,000) per occurrence that covers the underlying policies;

**Business Auto Liability** – The Contractor shall maintain Business Automobile Liability coverage, with no less than a one-million-dollar (\$1,000,000) Combined Single Limit, which shall cover liability arising out of any motor vehicle, whether owned, hired, or non-owned. If the Agreement involves removing hazardous waste from the project site, or the project involves environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (CA 9948) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

**Asbestos/Pollution Liability Insurance** – The Contractor shall maintain Asbestos/Pollution Liability Insurance coverage, with no less than two-million-dollar (\$2,000,000) each occurrence/ \$4,000,000 aggregate. Such insurance shall apply to acts or omissions of the Contractor arising out of the scope of services covered by the Agreement for the abatement and disposal of asbestos.

If coverage is written on a claims-made basis, the Contractor shall so indicate, state as to whether defense costs are within or outside liability limits, and warrant as to each such policy that:

1. any applicable retroactive date precedes the effective date of the Agreement;  
and
2. continuous coverage will be maintained, or an extended reporting period will be obtained, for a period of not less than two (2) years from the date work under the Agreement is completed.

The Contractor shall provide such other types of insurance, at such limits and with such conditions, as may be specified by the City or the Library.

### B. General Requirements for Insurance Coverage and Policies

1. All insurance policies required under this Agreement shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/"VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the New York City Law Department.
2. All required insurance shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City or the Queens Borough Public Library.
3. All required insurance policies shall be in a form acceptable to the City and the Library and shall

## ATTACHMENT 2

contain no exclusions or endorsements that are not acceptable to the City and the Library.

4. In the event the Contractor, as the case may be, receives notice, from an insurance company or other person, that any insurance policy required under this Exhibit C shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor, as the case may be, shall immediately forward a copy of such notice to:

Lawrence Vedilago  
Risk Management  
Queens Borough Public Library  
89-11 Merrick Boulevard  
Jamaica, New York 11432

5. The omission of any endorsements or clauses required by this Exhibit will be considered cause for rejection of the policy.

6. The party required to obtain such insurance shall be solely responsible for the payment of all premiums for any policy required under this Agreement and all deductibles and self-insured retentions to which such policy may be subject, whether or not the City of New York is an Additional Insured under the policy.

If any of the insurance policies utilized for the Library's projects contain Deductibles or Self-Insured Retentions ("SIRs"), they must be declared as such with applicable levels on the Certificates of Insurance. The Library has the option to accept or reject the Deductibles or SIRs, or to impose additional security or other requirements, in view of the Library's preference that insurance policies utilized for the Library's projects have no Deductibles or SIRs;

7. Insurance coverage in the minimum amounts provided for herein shall not relieve the Contractor of any liability under the contract, nor shall it preclude the City or the Library from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable law.

8. Wherever this Exhibit 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.

9. Contractors may satisfy the insurance obligations under this Exhibit through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

10. Contractor shall provide certified copies of the declarations pages or of the insurance policies themselves, upon request by the Library, within twenty (20) calendar days of such request.

11. Failure of the Library to demand such certificates, policies, endorsements, or other evidence of full compliance with these insurance requirements, or failure of the Library to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Contractor's obligation to maintain such insurance.

## ATTACHMENT 2

12. The Contractor shall waive all rights against the City and the Library and their agents, officials, officers, trustees, directors, and employees, for recovery of damages to the extent these damages are covered by the CGL policy, the Business Auto Policy, and the Umbrella policy.

13. The Contractor shall provide a copy of these Insurance Requirements to its insurance producer(s) and/or insurance carrier(s) to determine if they can be met.

14. The Library reserves the right to adjust these insurance requirements.

15. The Contractor shall procure and maintain any insurance coverage as required by Federal, State or local laws.

16. The Contractor shall require every subcontractor(s) to procure and provide all of the same insurance requirements that the Contractor shall provide prior to commencement of, and through to completion, any work arising out of the Agreement between the Library and the Contractor.

### C. Proof of Insurance

1. For Commercial General Liability and Umbrella Insurance, Contractors shall, within ten (10) calendar days of (a) the Effective Date in the case of the Contractor, and (b) the award of its contract in the case of the Contractor, file a Certificate of Insurance, which is in accordance with the requirements of subsection (C)(5) herein, with BOTH the Queens Borough Public Library and the Commissioner of the Department of Design and Construction (“DDC Commissioner”).

2. For Builders’ Risk Insurance, Grantee’s Contractor shall file a Certificate of Insurance, which is in accordance with the requirements of subsection (C)(5) herein, with the DDC Commissioner and the Library as directed, but in any event no later than ten (10) calendar days prior to commencement by the Contractor of any construction work.

3. The Contractor shall provide proof of Workers’ Compensation, Employers’ Liability, and Disability Benefits Insurance in a form acceptable to both the Library and the DDC Commissioner within ten (10) calendar days of the Effective Date. Each Contractor shall provide such proof within ten (10) calendar days of the award of its contract.

4. For all policies provided pursuant to this Exhibit, other than Workers’ Compensation, Employers’ Liability, and Disability Benefits Insurance, all Certificates of Insurance shall be in a form acceptable to the Library and the DDC Commissioner and shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, (b) for Commercial General Liability Insurance, that the City and the Queens Borough Public Library are Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26 and (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number). All Certificates of Insurance shall be accompanied by the required additional insured endorsement and either a duly executed “Certification by Insurance Broker or Agent” in the form attached to this Exhibit or completed copies of all policies referenced in the Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

5. Documentation confirming renewals of insurance required hereunder shall be submitted to the DDC Commissioner not less than thirty (30) calendar days prior to the expiration date of such policy.

6. Copies of any policy required by this Exhibit shall be provided to the Library and the City by the



## ATTACHMENT 2

party required to obtain such insurance upon demand therefor by the Library, DDC Commissioner or the New York City Law Department.

### D. Site Operations

1. No Contractor shall commence operations at the Project site or adjacent thereto unless and until proof of all insurance required in connection with such Contractor has been submitted to and accepted by the DDC Commissioner and the Library Risk Manager. The Contractor shall agree that it shall not commence operations at the site or adjacent thereto unless and until all such insurance has been submitted to and accepted by the DDC Commissioner and the Library Risk Manager. Acceptance by the DDC Commissioner of a certificate does not excuse the Grantee or Contractor from securing insurance consistent with the provisions of this Exhibit or of any liability arising from their failure to do so.
2. The Contractor shall be responsible for ensuring continuous insurance coverage as required by this Agreement and shall only authorize work at the Project site during the effective period of all required coverage.
3. In the event that any insurance policies that the Contractors are required to maintain lapse, are revoked, suspended or otherwise terminated, for whatever cause, then the Contractor, as the case may be, shall immediately stop all work at the Project site, and shall not recommence work at the site until authorized in writing to do so by the Library. Upon quitting the Project site, unless otherwise directed by the DDC Commissioner, the Contractor shall leave all plant, materials, equipment, tools and supplies on the Project site. The term of the relevant agreement or contract shall continue to run during such periods and no extensions of time will be granted. Furthermore, the DDC Commissioner may ensure that the relevant Contractor maintains the required insurance as described above.
4. Contractor shall promptly notify the Library Risk Management Division and the DDC Commissioner of any accidents causing bodily injury or property damage arising in the course of operations under the Agreement.

### E. Miscellaneous

1. Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Exhibit, the Contractor 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 Contractors' own employees) no later than twenty (20) days after such event. For any policy where the City or the Library is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York and the Queens Borough Public Library 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 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, and to Lawrence Vedilago, Risk Management, Queens Borough Public Library, 89-11 Merrick Boulevard, Jamaica, New York 11432.
2. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim

## ATTACHMENT 2

under any insurance policy required under this Exhibit, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

3. Any notice required to be given to the Library, City or the DDC Commissioner under this Exhibit or any insurance policy required hereunder shall be addressed to:

The City and the DDC Commissioner:

Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York, New York, 11101.

The Library:

Lawrence Vedilago, Risk Management, Queens Borough Public Library, 89-11 Merrick Boulevard, Jamaica, New York 11432.

4. The Contractors waive all rights against the City, including its officials and employees, and the Queens Borough Public Library and the Library Board of Trustees for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractors.

5. In the event the Contractors utilize a self-insurance program to satisfy any of the requirements of this Exhibit, the Contractors shall ensure that any such self-insurance program provides the City and the Library with all rights that would be provided by traditional insurance under this Exhibit, including but not limited to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

6. The Contractors' failure to secure policies in complete conformity with this Exhibit, gives an insurance company timely notice of any sort required in this Agreement, or do anything else required by this Exhibit shall constitute a material breach of this Agreement and of the Contractor's contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City or by the Library at any time.

7. Insurance coverage provided pursuant to this Exhibit or otherwise shall not relieve the Contractors of any liability under this Agreement or Contractors' contracts, nor shall it preclude the City or the Library from exercising any rights or taking such other actions available to it under any other provisions of this Agreement or law.

### II. RISK OF OPERATIONS AND INDEMNIFICATION PROVISIONS

A. Contractor shall be solely responsible for the safety and protection of all its employees and shall assume all liability for injuries, including death, which may occur as a result of its performance of this Agreement whether or not due to the negligence, act or omission of Contractor, its agents or subcontractors. The provisions of this Section shall not be deemed to create any new right of action in favor of any third party against the Library or the City.

B. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the City, its employees and agents, the Queens Borough Public Library and its Board of Trustees (collectively, the "Indemnitees") harmless against any and all claims (including but not limited to claims asserted by any employee of the contractor, or its subcontractors) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys' fees and

## ATTACHMENT 2

disbursements) allegedly arising out of or in any way related to the operations of the Contractor, or subcontractors, in the performance of this Agreement or from the Contractor's and/or its subcontractors' failure to comply with any of the provisions of this Agreement or of any 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 Section II by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that 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.

C. The contractor shall be solely responsible for and shall indemnify, defend and hold the Indemnitees harmless against any and all claims and judgments for damages for any infringement of copyright, trademark, and patents or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the Work, including all costs and expenses which the Indemnitees shall or may incur or be obligated to pay by reason thereof.

D. Indemnification under this Section II or any other provision of the Agreement shall operate whether or not the contractors or subcontractors have placed and maintained the insurance specified under this Agreement.

## **ATTACHMENT 2**

### **CERTIFICATES OF INSURANCE**

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 the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures:

# ATTACHMENT 2

## CITY OF NEW YORK CERTIFICATION BY INSURANCE BROKER OR AGENT

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

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email address of broker or agent (typewritten)]

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

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

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

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_

# ATTACHMENT 2

## EXHIBIT D PAYMENT GUARANTEE

### I. (A) For purposes of this Exhibit D:

(1) "Contractor" means a City-Funded First Tier Construction Contractor and a City-Funded Second Tier Construction Contractor who or which is in contract with a First Tier Consultant (whether or not the First Tier Consultant was City-Funded); and

(2) "Subcontractor" means a person, firm or corporation, excluding employees of a Contractor, who or which contracts with a Contractor to furnish, or actually furnishes to a Contractor for compensation, labor, materials, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder.

(B) In the event a Contractor is not required to provide a payment bond, the City shall, in accordance with the terms of this Exhibit D, guarantee payment of all lawful claims for:

(1) Wages and compensation for labor performed and/or services rendered; and

(2) Materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with the City as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of the Grantee or the Contractor, or a Subcontractor of the Contractor.

II. The provisions of Section I.(B) of this Exhibit D are subject to the following limitations and conditions:

(A) The guarantee is made for the benefit of all beneficiaries as defined in Section I.(B) of this Exhibit D, provided that those beneficiaries strictly adhere to the terms and conditions of Section II.(C) and (D) of this Exhibit D.

(B) Nothing in this Exhibit D shall prevent a beneficiary providing labor, services or material for the Work from suing the person, firm or corporations for whom such labor, services or material was provided for any amounts due and owing the beneficiary by such person, firm or corporation.

(C) Every person who has furnished labor or material, to a Contractor or to a Subcontractor of the Contractor, in the prosecution of the Work and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to the Contractor within one hundred twenty (120) days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by the Contractor by other

## ATTACHMENT 2

means, such notice shall be deemed sufficient.

(D) Except as provided in Labor Law Section 220-g, no action on this payment guarantee shall be commenced after the expiration of the one-year limitations period set forth in Section 137(4)(b) of the State Finance Law.

(E) A Contractor shall promptly forward to the City any notice or demand received pursuant to Section II.(C) of this Exhibit D. The Contractor shall inform the City of any defenses to the notice or demand and shall forward to the City any documents the City requests concerning the notice or demand.

(F) All demands made against the City by a beneficiary of this payment guarantee shall be presented to the Project representative along with all written documentation concerning the demand which the Project representative deems reasonably appropriate or necessary, which may include, but shall not be limited to: the subcontract; any invoices presented to the Contractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Contractor and that the demand has not been paid by the Contractor within the time allowed for such payment by the subcontract; and copies of any correspondence between the beneficiary and the Contractor concerning such demand. The City shall notify the Contractor that a demand has been made. The Contractor shall inform the City of any defenses to the demand, and shall forward to the City any documents the City requests concerning the demand.

(G) The City shall make payment only if, after considering all defenses presented by the Contractor, it determines that the payment is due and owing to the beneficiary making the demand.

(H) No beneficiary shall be entitled to interest from the City, or to any other costs, including, but not limited to, attorney's fees, except to the extent required by State Finance Law Section 137.

III. Upon the receipt by the City of a demand pursuant to this Exhibit D, the City may withhold from any payment otherwise due and owing to the Grantee under this Agreement an amount sufficient to satisfy the demand.

(A) In the event the City determines that the demand is valid, the City shall notify the Contractor of such determination and the amount thereof, and direct the Contractor to immediately pay such amount to the beneficiary. In the event the Contractor, within seven (7) days of receipt of such notification from the City, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the Contractor to the beneficiary for the amount of the demand determined by the City to be valid. The Contractor, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the City, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.

(B) In the event that the amount otherwise due and owing by the City to the Grantee is insufficient to satisfy such demand, the City may, at its option, require payment from the Grantee of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the City may have under law or contract.

(C) In the event the City determines that the demand is invalid, any amount withheld pending the City's review of such demand shall be paid to the Grantee; provided, however, no lien has been filed. In the event a lien has been filed, the parties will be governed by the provision of the Lien Law of the State of New York.

## ATTACHMENT 2

IV. In the event the City determines that the beneficiary is entitled to payment pursuant to this Exhibit D, such determination and any defenses and counterclaims raised by the Contractor shall be taken into account in evaluating the Grantee's performance.

V. Nothing in this Exhibit D shall relieve a Contractor of the obligation to pay the claims of all persons with valid and lawful claims against the Contractor relating to the Work.

VI. Notwithstanding any provision to the contrary contained in the Agreement (including this Exhibit D), the payment guarantee made pursuant to this Exhibit D shall be construed in a manner consistent with Section 137 of the New York State Finance Law and shall afford to persons furnishing labor or materials to the Contractor or its Subcontractors in the prosecution of the Work all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the City on the payment guarantee provided by this Exhibit D within the one year limitations period set forth in Section 137(4)(b).



## ATTACHMENT 2



### REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau**

**212-825-5959**

or by mail or in person at:

DEPARTMENT OF INVESTIGATION

80 MAIDEN LANE, 17th FLOOR

NEW YORK, NEW YORK 10038

Attention: COMPLAINT BUREAU

or file a complaint on-line at:

[www.nyc.gov/doi](http://www.nyc.gov/doi)

All communications are confidential.

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

## ATTACHMENT 2

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of 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 information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made 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.



# **ATTACHMENT 2**

## **EXHIBIT F**

### **FORM OF TAX AFFIRMATION**

**[separate attachment]**

# ATTACHMENT 2

## 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]*

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### 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

\_\_\_\_\_  
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.